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The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is exempted from the provisions of the Notification of Vacancies Order, 1952. Note: Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers, are exempted from the provisions of the Order.

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G. A. WHEATLEY,
Clerk of the County Council.

The Castle,
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KENT COUNTY COUNCIL

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The posts are pensionable and subject to a medical examination. Canvassing, either directly or indirectly, will disqualify.

Applications, in own handwriting, stating age, experience, qualifications, present and previous appointments, and giving names and addresses of two persons who can testify as to character and ability, to reach me not later than September 1, 1952.

W. L. PLATTS,
Clerk of the Peace and of
the County Council.

County Hall, Maidstone.
August 1, 1952.

RETIREMENT

OF THE JUSTICES' CLERK AND HIS BENCH

This article by Mr. J. N. MARTIN in our issue for July 19 has evoked considerable discussion.

One Justices' clerk writes:

"I intend—as I hope all other clerks intend—that every member of my Bench shall receive a copy of this article . . ."

Another says:

"Do you print such an article separately? If you do I would like to have copies for the use of my Bench."

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By ESSEX.

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NOTES of the WEEK

Expenses of Justices

A correspondent informs us that a resolution on the subject of the payment of out of pocket expenses to Justices of the Peace has been submitted for inclusion on the agenda of a political party conference. That the case for the payment of such expenses is rarely heard was evident, adds our correspondent, from the way in which the proposal was received.

The whole question was considered carefully by the Royal Commission on Justices of the Peace, whose report Cmd. 7463 deals with the matter in paras. 200 *et seq.* The Royal Commission made recommendations as to travelling allowances but felt unable to make any recommendations for payment in respect of subsistence or loss of remunerative time.

The relevant section of the Justices of the Peace Act, 1949, is s. 8 which provides for payment out of public funds to the Justices of the Peace, "at the prescribed rates by way of travelling allowance or lodging allowance where expenditure on travelling or, as the case may be, on accommodation for the night is necessarily incurred by him for the purpose of enabling him to perform any of his duties as a justice."

Nagging and Cruelty

The cases of *Atkins v. Atkins* [1942] 2 All E.R. 637 and *Usmar v. Usmar* (1948) W.N. 207 (C.A.) are authorities for the proposition that nagging which results in injury to health may be cruelty.

The case of *King v. King*, which was decided by the House of Lords and was reported in *The Times* of August 1, is an instance where the alleged nagging was held not to be such cruelty as to justify the grant of a divorce.

The cruelty alleged consisted of constant nagging by complaints of the husband's adultery and of his light conduct towards women, and was said to have caused injury to his health. The husband admitted certain acts of adultery. Barnard, J., granted the husband a decree, but the Court of Appeal reversed his decision, whereupon the husband appealed to the House of Lords.

The House, by a majority of three to two, dismissed the appeal. In delivering his opinion, Lord Normand discussed earlier cases, and went on to say that in all questions of cruelty, the whole of the matrimonial relations must be considered, especially when the cruelty consisted not of violent acts but of reproaches, complaints, accusations, or taunts. Wilful accusations might be made which were not true and for which there were no probable grounds, and yet they might not amount to cruelty. After considering the evidence, Lord Normand said that the injury to the husband's health was not serious, and could as readily be attributed to the breakdown of the marriage brought about by the conduct of both parties as to the cruelty of the wife, and the husband had failed to prove conduct amounting to cruelty.

In a dissenting opinion, Lord Oaksey observed that this was not a case in which the judgment of Mr. Justice Barnard, who saw and heard the witnesses, ought to have been reversed. Divorce petitions on the ground of cruelty were cases in which it was especially important that the findings of the judge should not be interfered with. The judge, who saw the witnesses, believed the husband and, in the circumstances, his judgment should not have been reversed.

The case is a striking instance of the difficulty of deciding where to draw the line between conduct which amounts to matrimonial cruelty and conduct which falls short of it. Justices often have to decide questions of persistent cruelty, and while many cases are straight-forward, some set them problems that are hard to solve. The various decided cases lay down certain principles, but the justices, having seen and heard the witnesses, must do their best to apply those principles and thus do right between the parties according to law.

Homes for Old People

We have received a delightful illustrated brochure from the Welfare Committee of the County Borough of Huddersfield, the occasion being the official opening of three homes for the aged on July 15. This brings the total number of such homes up to eight. The brochure states:

"Between the two great wars, much thought in welfare circles was given to improvements in the conditions of children, but there were some authorities who also gave consideration to making better arrangements for the care of the older folk.

"Huddersfield was one of such authorities and in the latter part of the '30s a policy was formulated of providing residential accommodation for older people in small homes away from the institution."

Owing to impending war, plans had to be put by for the time but it happened in 1940 that premises fell vacant and the first of these homes was opened. The Committee proceeded to open other homes, and it claims to have anticipated to a considerable extent, the provisions of the National Assistance Act, 1948. The number of persons who can now be accommodated is 174. Another home is in contemplation which will bring the number up to 202. Further plans are in hand.

These homes are provided with all reasonable amenities, the inmates are free to go out when they please, and visitors can call at any reasonable hour.

It is evident that the Huddersfield Committee is doing good work for the comfort of old people, many of whom would otherwise spend their later years in straitened circumstances, in loneliness, and without the care and individual attention they need.

Report of the Devon Children's Officer

Reports of children's committees and children's officers provide evidence that in fulfilling their duties under the Children Act, 1948, they are concerned much more in maintaining family life than in receiving children into care and relieving parents of their responsibilities.

In the report of Mr. Kenneth Brill, the Children's Officer of the County of Devon, we find this policy illustrated. Dealing with applications by parents to have their children received into care he says: "Only a small proportion of applications are accepted. The parents are helped to make arrangements for themselves with the assistance, where necessary, of other services such as Home Helps. Relatives are interviewed and urged to give temporary help. Sometimes it is necessary to tell the parents, civilly but bluntly, that they cannot shuffle off their responsibilities on to the County Council. Disappointed parents often threaten to appeal to higher authority, but generally go away and make arrangements for themselves."

Of 209 children received into care during the year ended March 31, 1952, only ninety-three were expected to remain in care for more than six months and 116 were short stay admissions. Referring to the duty of the local authority, in accordance with s. 1 (3) of the Act to hand over children to parents or relatives where this is possible, the report states: "This duty has been tackled energetically during the past twelve months with the result that the number of children restored to their parents or provided for in other ways has exceeded the number of children received into care by seventy-nine. Even in the case of a child committed by a court to the care of the local authority as a fit person, where the order remains in force, unless revoked earlier, until the child becomes eighteen, the same kind of policy is followed. Parents, it is said, tend to think that there is no hope of restoration. "In particular, parents tend to feel that their children are better off in county council homes than with their own families, and they point to the order of the court as giving legal sanction to this view. The Committee's officers have kept the welfare of each child under review and have encouraged parents to receive committed children back when the situation has improved sufficiently to justify this course. Much time has been spent in keeping in touch with parents, including those who have moved to other parts of the country."

Preventive Work

There is much wisdom in the following passage from Mr. Brill's report: "There is little doubt that the emphasis in children's work during the coming years will be less and less on the static upbringing of children in Homes and more and more on mobilizing all the social agencies to ensure that children do not have to be received into care. In particular there is a danger that children received ostensibly for a short period to meet a temporary emergency may remain in care after the need has passed. It is easy to take spectacular action by clapping children into Homes to avoid some temporary hardship, but difficult to restore them once the home has been broken up, the parents have had a taste of freedom from responsibility, and, perhaps, the housing authority has been relieved of an unpopular applicant."

The Children's Committee has given careful consideration to what may be described as preventive measures and has adopted a general policy on the following lines: (a) Establishment of an experimental Family Service Unit modified to suit rural conditions; (b) Co-operation with the Home Help Service to ensure that no family has to be received into care simply for

lack of a home help; (c) Establishment of an Adoption Society to ensure that all children in need of this form of care may be quickly found the best possible home; (d) Establishment of a Mother and Baby Home to ensure that illegitimate children do not have to be received into care simply for lack of accommodation where they can be cared for by their mothers; (e) Representations to the Co-ordinating Committee to ensure that the District Councils are aware of the immense cost of caring for children who are evicted; (f) Discussion with the County Justices' Committee to ensure that Benches are fully aware of the relative suitability and expense of various modes of providing for children; (g) Discussion with the Local and National Directors of the National Society for Prevention of Cruelty to Children to ensure that all possible means of alleviating hardship are tried before homes are broken up; (h) Provision of best possible advice to juvenile courts after thorough investigation of each case before any committal order is made. In difficult cases the Committee will be represented by a solicitor; (i) Full use of the system established by the co-ordinating officer appointed under the circular on Neglect in the Home.

Cost of Maintenance

We sometimes call attention to the heavy cost involved in maintaining children at the public expense and apart from their parents. In many cases it appears impossible to avoid this, but the problem undoubtedly requires attention, and every means of effecting economies without harm to the children concerned should be employed.

Particulars as to the cost of juveniles in the remand homes in Devonshire, included in this report, have naturally given rise to anxiety: "The Committee is concerned at the relatively high costs in the Remand Homes, due to the fact that they are under-occupied, which are running at £7 17s. 10d. per child week at Ashburton and £10 9s. 8d. per child week at Pinhoe. The Ashburton building, which is big enough to take thirty-six boys, has had an average daily occupation of ten and has had a maximum on any one day of twenty-two and a minimum of six. The corresponding figures for Pinhoe are an average of five with a maximum of ten and a minimum of one. Consideration is being given to converting Ashburton for use as a mixed Remand Home. This has been deferred pending the holding of a regional conference on the subject."

On the subject of other children with whom the Children's Committee deals, Mr. Brill's report gives the estimated weekly cost of maintenance during the year 1952-53 as follows:

	£	s.	d.
Approved Schools	6	6	0
Remand Homes	8	0	0
Children's Homes	3	17	0
Reception and Intermediate Homes	5	5	0
Nurseries	6	0	0
Private and Voluntary Homes	4	0	0
Other Local Authorities' Homes	5	0	0
Boarded Out	2	0	0

Social Security in Canada

In Canada, the Federal Parliament has only such powers as it possesses under the British North America Act, and it was not until the Act was amended that it was possible for the government to bring into operation, this year, a general old age pension scheme, which is contributory in a limited sense. The pension is fixed at forty dollars a month and, as under former modified schemes, is usually sent by cheque to the recipient. The total cost is estimated at 335 million dollars. Health services and, in

some provinces, supplementary allowances on a means test are being also provided. The pension is, however, only payable at the age seventy and there is a parallel scheme of old age assistance for persons over sixty-five years, in respect of which the Federal government meets one half of the cost up to forty dollars a month. This scheme is subject to a means test. As in this country, it is recognized that financial assistance does not solve all the problems of the aged, so consideration is also being given to housing and hospitalization. Research is being undertaken into geriatrics at the Western University with financial assistance from the Federal government. In Ontario, new legislation makes provincial aid available for housing accommodation provided for the aged, and there have been extensions in the provision of recreational and club facilities on the lines of those provided by voluntary organizations in this country, where voluntary enterprise is giving a lead to Canada and other Commonwealth countries.

Elderly Mental Patients

Magistrates are concerned when they are called upon to certify elderly persons for admission to a mental hospital, and in many parts of the country the position was more satisfactory when, under the Poor Law system, there was some accommodation for such patients in the infirmary. In some areas, the Regional Hospital Board has continued this special type of provision, but more often the accommodation has been put to other use or is empty owing to shortage of staff. It is wrong in principle that an aged person should have to be certified as the only means of providing the necessary care for him. We hope that some solution will soon be found to this problem as, in spite of "lunacy" being called mental disorder and the "asylum" being known as the mental hospital, there is still a stigma attached to certification in the minds of many people, and this may have repercussions in other directions such as if a son has to disclose in a life insurance proposal that there is insanity in his family. An investigation of a group of elderly patients admitted to the Graylingwell Hospital, which was noted in the *Lancet* of July 5 does, however, show that prompt and adequate mental treatment proves satisfactory in many cases. Indeed, certification—or preferably voluntary treatment—may at times be in the person's own interest. Comparison with the position in the United States, where the number of admissions to mental hospitals has increased more than in this country, seems to show that the admissions of the elderly vary with their degree of social security as, taken broadly, their social and economic status are greater in this country.

The elderly admitted to a mental hospital can never form a homogeneous group. Some will deteriorate and will end their lives in *senile dementia*. But it was shown in the Graylingwell investigation that a large proportion will recover and will respond to methods of treatment if these are used. A study was made of 150 patients admitted to the hospital during 1948 which was followed up until March, 1951, either in hospital or by letter or by a visit by a psychiatric social worker. It was judged that effective psychosis—usually depression—accounted for eighty-one (representing fifty-four per cent.) of the cases and senile psychosis for only thirty-six (twenty-four per cent.). Six months after admission forty-six of the eighty-one cases of effective psychosis were out of hospital and only five had died. Of the thirty-six patients with senile psychosis five had been discharged, and nineteen had died. By the end of the study, some two or three years later, forty-three of the effective patients had maintained their recovery; seven had recovered; nineteen had died and four were untraced. Thus a substantial proportion were finding life worth while. Of the thirty-six with senile psychosis thirty-two were dead; three were deteriorating

in-patients and one was untraced. Early and careful diagnosis is clearly most important, and the clue to diagnosis is often to be found in a detailed and carefully taken history. The duly authorized officer in making his preliminary inquiries should therefore take great care to collect as much information as possible for use at the mental hospital if the person is admitted.

School Medical Service in Kent

The progressive improvement in the general well-being of children in Kent which has been noticeable for several years, continued during last year as indicated in the annual report of the School Medical Officer, the percentage of children found to be "good" have increased from 38.5 per cent. to 42.4 per cent. and "poor" decreased from 6.5 per cent. to 4.5 per cent. The number of children found to be unclean was also more satisfactory, being 3,171, which is less than half of that in 1947. As showing the difficulty in accommodating the increasing numbers of children, it is mentioned that the number of children attending primary school was 5,000 more than in 1950. The further increase which is expected this year will cause a curtailment or abandonment of the routine medical examination of the eight years' old group, in order to comply with the statutory requirement in connexion with the older age groups, unless there is an increase of medical staff, which seems unlikely for financial reasons. In Kent, as elsewhere, progress has been made towards the ideal of unification of the school medical service with other branches of the National Health Service, which we hope will become general on grounds both of efficiency and economy. For instance, as a result of negotiations with the Regional Hospital Board, all the ear, nose and throat clinics provided by the education department have been closed and the work absorbed into the services provided at hospitals. In addition, the Board has assumed responsibility for half of the orthopaedic clinics which were formerly provided by the county council. This should be the policy in the process of rationalization, which can only be achieved if it is carried out as an evolutionary process and with full agreement and consideration by the parties concerned. The report contains much useful information, and in particular we have noted the reference to the accommodation for educationally sub-normal children. It is clearly unsatisfactory that there should be a waiting list of 400 for a boarding school where there is accommodation for only 100 boys. The problem is therefore similar to that which we noted when commenting on the Middlesex report. The majority of boys arrive at the school as a sequel to a behaviour problem which has brought their case urgently to the notice of the authority, so social readjustment takes first place in the scheme of training. Some of them come from homes which are largely responsible for their behaviour difficulties and in cases where there has been cruelty over a period of years, it is sometimes impossible fully to restore normal balance. Often where there is no question of actual cruelty, there is such gross mishandling that the effects are similar. In such cases, rehabilitation can only be achieved if the process is uninterrupted by return to home conditions. It is suggested in the report, therefore, that careful consideration should be given as to whether any individual boy should return home for the holidays or not. Another matter dealt with in detail in the report is the operation of the dental service, which, as in Middlesex, is causing concern. The average number of children allocated to each dentist is 7,100, varying from 9,877 to 4,162.

Fish Ambulant

It is not often that a case involving merely points of law, with no dispute about the facts, has the dual appeal—popular and technical—possessed by *Wardhaugh Ltd. v. Mace* [1952] 2 All

E.R. 28. On the popular side, the question whether fish is "meat" was fully exploited by the newspapers, along the always attractive line: "Just fancy their not knowing that, without a lot of arguing." For the lawyer concerned with magisterial practice, there was what looks (now that, with the full judgment of the Divisional Court available, one can be wise after the event) like a strange slip by the prosecution and by the learned stipendiary magistrate, in laying an information at Liverpool, and adjudicating there, in respect of an offence completed at the other end of Lancashire.

The facts were simple. A lorry based at Newcastle took a load of fish to Fleetwood, which involved a contravention of s. 52 of the Transport Act, 1947, unless legalized by the exception in s. 52 (1) (a) for the carriage of meat, as defined by s. 125 (1). The lorry then travelled empty to Liverpool, which was lawful, and at Liverpool took on board a load of fruit which it carried to its base at Newcastle. Taking this last load looks like an offence, but it does not seem that the question was dealt with.

To take first the "popular" aspect of the case. Meat is defined by s. 125 (1) of the Act of 1947 to mean "carcasses of animals, parts of carcasses of animals, or offals of animals, being carcasses . . . suitable for human consumption . . ." Now the word "animal" is notably equivocal. It can be used in distinction from vegetable and mineral, as in the "Twenty Questions" programmes, or in distinction from *species* such as mankind, birds, fishes, or insects, which are strictly within the genus "animals." We have recently advised that fish are "vertebrate animals" within the Pet Animals Act, 1951, just as we have advised that they are "articles" within s. 154 of the Public Health Act, 1936; see, for example, p. 47, *ante*. Language is not precise enough to supply clear cut distinctions in every context, and the task of the court in construing an Act of Parliament (or, for the matter of that, any other document) is to find out what its authors meant. There was plausibility in the argument that the only evident reason for excepting meat from the general prohibition of carriage in s. 52 was its perishable nature; that fresh fish is at least as perishable as fresh meat (and more perishable than chilled or frozen meat which are mentioned

in the definition section), and therefore that, on the reason of the thing, the reference to meat included fish: a suggestion not excluded by the reference to carcasses, since a fish does possess a carcass, even if the latter word is more normally applied to mammals.

The Divisional Court, however, regarded this line of thought as more plausible than sound, pointing out that if Parliament had meant the exception to extend to fish it could as easily have said so as leave the conclusion to be drawn by inference or by reference to old dictionary meanings. The Court was careful to point out that it was not settling the status of bird carcasses or whale meat (this last surely surprising, for nobody doubts that whales are mammalian animals, and, equally, modern English Governments regard parts of the carcasses of whales as suitable for human consumption).

The technical or jurisdictional point arose from s. 46 (3) of the Summary Jurisdiction Act, 1879. This enacts that where an offence is (alleged to have been) committed . . . in respect of any property in or upon any . . . vehicle employed in a journey, the defendant may be tried by any court of summary jurisdiction through whose jurisdiction such . . . vehicle passed in the course of the journey . . . during which the offence was committed." Obviously this enactment in 1879 was not aimed at transit of goods in breach of a modern statute, but at such an offence as the recent robbery of mails in a Brighton-London train. Its purpose was to relieve the prosecution of the need to find at what stage the robbery took place, so as to have the proper venue. Though the Newcastle lorry's three fold journey was, in the language of the Admiralty Court, a continuous voyage, the "journey during which the offence was committed" was the first stage, as far as Fleetwood, and was severable from the next stage which was quite innocent. Partly for this reason, and partly from evident distaste for turning the section of the Act of 1879 (despite its superficial aptitude) into a means for enforcing the enactment of 1947, the Divisional Court held that the learned magistrate at Liverpool had stepped outside his jurisdiction, and on this ground the conviction must be quashed. They were, however, careful to decide the other point (fish is not "meat") and it is this which has more general interest.

REASONABLE AND HONEST BELIEF OF WIFE'S ADULTERY

The implications of the decision of the High Court in *Chilton v. Chilton* [1952] 1 All E.R. 1322; 116 J.P. 313, for the development of matrimonial law and for the practice of the summary courts are likely to be far reaching. Before discussing some of these it may be permissible to remark that although Lord Merriman, P., said in this case that he could see no logical reason why a reasonable *bona fide* belief in a wife's adultery should not have the same consequences when put forward as a defence to an allegation of neglect to maintain as when proffered as a defence to an allegation of desertion, there does seem to be this distinction that, as he himself pointed out in *Glenister v. Glenister* [1945] P. 30, a husband who has good grounds for believing in his wife's adultery is in danger of being held to have condoned her misconduct—and so deprive himself of his remedy—if he continues to cohabit with her, whereas no such penalty attaches to the action of continuing to maintain a wife who the husband believes is guilty of adultery. Furthermore it might have been argued that more than a mere belief in a wife's adultery is necessary to relieve a husband of his common law duty of maintaining his wife. However these views did not commend themselves to

the High Court, and the position now is that a *bona fide*, reasonable belief in a wife's adultery is a good defence to a charge of wilful neglect to maintain.

The circumstances under which the case of *Chilton* came before the High Court were that the husband appealed against an order made against him by a summary court on the ground of his wilful neglect to maintain his wife. He had resisted this summons, and also a summons alleging that he had deserted his wife, on the ground that his wife had committed adultery, but no formal charge had been made to that effect, and no formal notice had been given to her. The justices found that there was not sufficient evidence that the wife had committed adultery, but that by her conduct she had induced a reasonable belief in her husband's mind that she had done so. Accordingly, as far as the allegation of desertion was concerned, the case fell within the principle laid down in *Glenister v. Glenister* (*supra*), and on this ground that summons was dismissed, but an order was made on the second summons. The husband subsequently appealed to the High Court with the result noted above.

In delivering his judgment in this case, Lord Merriman, P., was careful to point out that the matter was being dealt with as a strict matter of law on the facts as they stood when the summons came before the justices and before they had found that there was not sufficient evidence of adultery. His reason for emphasizing this was no doubt that he wished to ensure that the issue was not confused by the fact that following *Allen v. Allen* [1951] 1 All E.R. 724; 115 J.P. 229, the finding by the justices that adultery was not proved would itself alter the relationship of the parties. In this latter case the matrimonial litigation started by the wife taking proceedings for restitution of conjugal rights against her husband. Her petition was refused since the judge found that the husband reasonably believed that his wife had committed adultery. The next step was that the husband took proceedings for divorce on the grounds of his wife's adultery. His petition was dismissed as the judge found that the husband had not proved his case. The wife subsequently took out a summons against her husband on the ground that he had wilfully neglected to maintain her; this the husband resisted on the ground that he had a *bona fide* belief that his wife had committed adultery, but an order was made against him. He appealed against this order to the Court of Appeal, but this court held that in the face of the judgment of the court against him on the issue of his wife's adultery, the husband could no longer reasonably hold that his wife was an adulteress, and the order against him was confirmed. It would seem that further conclusion may be drawn from this case that a quantum of evidence which will not suffice to prove adultery may nevertheless be sufficient to give rise to a reasonable belief on the part of the husband that adultery has been committed.

In view of this decision the question now arises whether the unsuccessful wife in *Chilton v. Chilton*, *supra*, will be able to return to the summary court and obtain an order against her husband if he continues to fail to maintain her? (This is, of course, assuming that at the subsequent hearing the husband can produce no further evidence concerning his wife's adultery). In other words, must the judgment of the justices in a case in which the issue of adultery is not formally raised to be taken to have the same weight in dispelling the husband's hitherto reasonable belief as a judgment of the Divorce Court in which that issue is directly raised?

Although it would be inadvisable to be dogmatic, there are indications that if such facts were brought before the High Court the judgment of that court would be in favour of the wife. The mere fact that no formal notice of the allegation of adultery was given to the wife when the case was heard before the justices—although regrettable in view of the opinion which the High Court expressed in *Duffield v. Duffield* [1949] 1 All E.R. 1105; 113 J.P. 308 (that whenever a charge of adultery is made in a matrimonial matter which comes before a summary court, full particulars of the charge should be given)—does not seem of primary importance in this connexion since once the issue was raised the justices clearly had to decide whether or not adultery was proved since if it had been they would not have power to make any order. Of much greater importance is the fact that in the course of his judgment in *Allen v. Allen*, *supra*, Hodson, L.J., referred to the judgment of Lord Merriman in *Everitt v. Everitt* [1949] 1 All E.R. 908; 113 J.P. 279, and said: "he [Lord Merriman] there emphasized what is, in my judgment, an essential feature of the defence which the husband sought to raise in the present case, namely, its temporary nature, because, although at one moment a person may be able to say that he or she reasonably believes in a state of facts, that reasonable belief may be dispelled at any moment. Nobody could give an exhaustive statement of the ways in which a belief could be dispelled." In a later passage Lord Justice Hodson said: "... in my judgment there is nothing in the decision in

the *Glenister* case which makes it a proposition of law that the unsuccessful wife could not, immediately after the failure of her husband to establish the charge of adultery, have taken fresh proceedings for maintenance."

A more difficult question for the future on which there is little to indicate the lines along which the High Court will decide the matter when it is brought before it arises from the fact that it follows from the *Chilton* case that where a husband disputes a summons on the grounds of his wife's adultery it is now open to the summary court to refrain from pronouncing judgment on the allegation of adultery, and to decide the case in favour of the husband simply on the ground that the court is satisfied that the husband holds a reasonable and *bona fide* belief in his wife's adultery. However, is it proper for the summary court so to limit its judgment, or should the court state definitely whether or not it finds adultery proved? Since, as has been noted above, it is possible for the husband to hold a *bona fide* belief in his wife's adultery on evidence which will not prove a charge of adultery, it may be argued that once the evidence produced by the husband satisfies that court that his belief is reasonable and *bona fide*, the court should find in his favour, and the court is not required, and indeed should not, give judgment on the issue of whether the adultery is proved.

On the other hand the position of the wife, if the judgment of the court is limited in this way, is indeed unenviable since she cannot force her husband to take process against her on the ground of her alleged adultery, and there seems no way in which she can have the issue of her adultery directly raised for a decision of the court. It is true that the husband's reasonable belief may be dispelled by other means than a judgment of the court on the issue of adultery, and it is open to the wife to seek to dispel her husband's belief by explaining fully her conduct which had led him to believe in her adultery. If he still refuses to accept her explanation it would then seem open to her to apply to the court, and to ask the court to say that in view of her explanation the husband's belief was no longer reasonable. If the court again holds that the husband's belief is still reasonable there seems no reason why the wife's application should not be renewed again and again. Clearly the possibility of such continued litigation is undesirable, and in order to avoid the possibility of this, and to clarify the position between the parties it is suggested that where the husband raises the defence of belief in his wife's adultery the court should not merely decide whether or not this belief is reasonable, but should go beyond this and state whether or not the court finds that adultery has taken place.

In conclusion this may be an opportune occasion to point out that the possible exception to the decision in *Allen v. Allen* which was envisaged by Sir Raymond Evershed, M.R., in his judgment in that case may well arise in the summary courts. It will be recalled that he stated that if certain evidence—which on the face of it would be conclusive—is not available because owing to technical rules it was excluded, a husband might be able to maintain his plea that he reasonably believed in his wife's adultery although his petition for divorce had failed. Analogous circumstances could occur in the summary courts in a case where the husband could prove to the satisfaction of the justices that he reasonably believed in his wife's adultery—and indeed that she had in fact committed adultery—but nevertheless if the husband subsequently applied for a separation order on the ground of her adultery the court might be unable to make this order simply because the husband could not prove an act of adultery within the previous six months as *Teall v. Teall* [1938] 3 All E.R. 349; 102 J.P. 428, has decided he must. In such circumstances his failure to obtain an order would not seem to debar him from continuing to plead successfully that he reasonably and *bona fide* believed in his wife's adultery.

TWO SCHOOLS OF THOUGHT

By CHARLES ODELL, Deputy Clerk to Bromley Justices

It seems to the writer that the justices are in the unsatisfactory position of having two distinct lines of cases from which to choose when dealing with a case of desertion and wilful neglect to maintain, where the latter ground commenced from or after the date of desertion, and there was no consensual separation.

It has often been argued by practitioners that in such a case, both grounds must stand or fall together, for if the husband's conduct gave the wife reasonable cause to leave, he was, *ipso facto*, guilty of "constructive" desertion and wilful neglect to maintain; on the other hand, if the husband had, as a result of the wife's behaviour, a reasonable cause to separate, he was not guilty of desertion and she had lost her right to maintenance. The cases relied on were those culminating in *Edwards v. Edwards* [1948] 1 All E.R. 157; 112 J.P. 109, and in that case, Lord Merriam laid it down that definite evidence of a clear intention on the part of one spouse to drive the other away is not necessary to prove constructive desertion. A husband or wife must be presumed to intend the natural consequences of his or her acts, and, if it is a natural consequence of the behaviour of one spouse that the other leaves the matrimonial home, then the offending spouse must be presumed to intend that the other spouse should do so. The same principle applies when the conduct of the offending spouse is with a third person, which he or she must know will affect the other indirectly.

Since then, however, this principle has been disapproved by Denning, L.J., when in the case of *Hosegood v. Hosegood* (1950) W.N. 218, he said the doctrines of constructive malice and constructive notice were nowadays discredited, because they had a way of getting out of bounds. They led in time to the law's attributing to a man—quite falsely—a state of mind which he had never possessed. The doctrine of constructive desertion had not quite reached that stage, but if they were not careful, they might find themselves there. There were at present two schools of thought about constructive desertion. One school said that, in constructive desertion, as in actual desertion, a husband was not to be found guilty, however bad his conduct, unless he had in fact an intention to bring his married life to an end. That school admitted that there were many cases where he might be presumed to have that intention. For instance, when a man deliberately made his wife's life unbearable, he might be presumed to intend to drive her out, because he might be presumed to intend the natural consequence of his acts. But that school said that, if in truth the facts negated such intention, the courts should not attribute it to him. For instance, the conduct of an habitual criminal or drunkard might be such as to force his wife to leave him, but he might be devoted to her and the last thing he might intend was that she should leave him. In such a case, that school of thought would hold there was no desertion: *Boyd v. Boyd* [1938] 4 All E.R. 181; 102 J.P. 525.

The other school of thought did lip-service to the necessity for such an intention, but said that, even if the husband had no intention in fact to bring the married life to an end, yet he was conclusively presumed to intend the natural consequences of his acts; and if his conduct had been so bad or so unreasonable that his wife was forced to leave him, he must be presumed to have intended her to leave him, and he was guilty of constructive desertion, however much he might desire her to remain: *Sickert v. Sickert* [1899] P. 283, and *Edwards v. Edwards*, *supra*.

To his mind the views of the first school were logically unanswerable. When people said that a man must be taken to intend the natural consequences of his acts, they fell into error.

There was no "must" about it; it was only "may." The presumption of intention was not a proposition of law but a proposition of ordinary good sense. It meant that as a man was usually able to foresee what were the natural consequences of his acts, so it was, as a rule, reasonable to infer that he did foresee them and intend them. But while that was an inference which might be drawn, it was not one which must be drawn. If on all the facts it was not the correct inference, then it should not be drawn. That was made clear by the important judgment of Lord Goddard, C.J., in *R. v. Steane* [1947] 1 All E.R. 813; 111 J.P. 337, and by his (Denning, L.J.'s) own judgment in *Westall v. Westall* (1949) 65 T.L.R. 337.

The second school of thought was not so logical, but it was perhaps more in keeping with modern views about divorce, which were thus pithily expressed by Lord Simon in *Blunt v. Blunt* [1943] A.C., at p. 525: "The social considerations which make it contrary to public policy to insist on the maintenance of a union which has utterly broken down." This second school denied that they were introducing unwarranted grounds of divorce. After all, they said, there must have been at least three years separation, so the marriage had utterly broken down; and, if that had been produced by conduct of the husband so grave that the wife had quite justifiably been forced to leave him, she ought to be able to get a divorce. Although he realized the force of those considerations, he felt unable to give effect to them. The courts were not at liberty to grant a divorce simply because a marriage had utterly broken down. Where a husband had been guilty of conduct short of cruelty which justified the wife in leaving him, the court could make periodical payments for her support, but it could not, without abuse of language, automatically say that he had deserted her. He (his lordship) felt compelled to hold that the first school of thought was correct.

It is interesting to note that where magistrates' courts have differentiated by dismissing the desertion and making an order on the ground of wilful neglect to maintain, the High Court has refused to uphold such order. The most recent case of this kind is *Chilton v. Chilton* [1952] 1 All E.R. 1322, referred to in this journal at p. 304, *ante*. Pearce, J., in his judgment, said: "Unless there is some agreement, made expressly or by implication between the parties, the duty to cohabit and the duty to maintain are co-extensive, and, in my opinion, where the circumstances have excused the husband from his duty to cohabit he cannot be held guilty of wilful neglect to maintain."

Another such case is *Breakwell v. Breakwell* (1947) W.N. 249, where a summons alleging desertion was dismissed, and four months later an order made on a second summons alleging wilful neglect to maintain, based on matters relevant to the previous hearing, and it was held that there was no real evidence to support the second complaint and the justices' order was set aside; the justices were bound to have regard to their decision at the first hearing.

Of course, neither school is in conflict where the allegation of desertion fails by reason of consensual separation. In such a case, as was made clear in *Stringer v. Stringer* (1952) 116 J.P. 102, a maintenance order may be made on the ground of wilful neglect to maintain if the husband has accepted liability either express or implied, but he cannot be charged with this without warning, that is, where there has been no demand for maintenance.

In *Jamieson v. Jamieson* (1952) 116 J.P. 226, a case of cruelty, it was made clear by the House of Lords that intention need not

be proved by direct evidence; it can be inferred. In this case, Lord Merriman reiterated the principle of the second school of thought when he associated himself with an observation of Lord Greene, M.R., in *Buchler v. Buchler* (1947) 111 J.P. 179: In relation to the kindred topic of desertion by expulsion of a wife from the matrimonial home, he said that conduct which did not amount to a justification for withdrawing from cohabitation could not be made so by a wife announcing her intention of leaving her husband if he did not change his conduct. He (Lord Greene) added: "This is not, in my opinion, affected by the doctrine that a person must be taken to intend the probable consequences of his acts, for, if the acts are not such as to justify the wife in treating herself as expelled from the home, no inference can be drawn from those acts of an intention to expel her."

It would seem, therefore, that justices may take their choice of these conflicting schools of thought until the matter is settled by the House of Lords or, perhaps the Royal Commission on Marriage and Divorce may clarify the position in making recommendations to Parliament. As to the view of the second

school of thought, it may be pointed out that where there is "just and reasonable cause" to justify a wife leaving the matrimonial home, it must be "grave and weighty" according to the decided cases which apply equally to desertion and wilful neglect to maintain, and, therefore, its consequences known, and the intention to break off the cohabitation attributed, to the offending spouse.

Justices who prefer to be guided by the first school of thought may resolve the difficulty in cases where they find "reasonable cause" but are not satisfied of the intention to desert by asking both spouses to agree to a reconciliation. If the husband did not intend the separation he should be willing to agree; also it should be acceptable to the wife, as the "reasonable cause" in such a case, must have been borderline for the husband not to have realized the consequences of his conduct. If the husband refuses to entertain a reconciliation that would point to an intention on his part to separate and, further, if the justices are satisfied that the wife genuinely desires reconciliation, the husband would be deserting her thenceforth.

THE NEED FOR POLICE SCIENTIFIC AND TECHNICAL RESEARCH

[CONTRIBUTED]

There can be little doubt that, by modern standards, the police of this country are severely handicapped in the performance of their duties by the absence of scientific and technical research facilities. Since the formation of the modern constabulary by Peel through the Metropolitan Police Act, 1829, their work has increased both in volume and importance almost annually. The prevention and detection of crime is but one aspect of their duty, but it is the aspect which is principally associated in the public mind with the police service. Yet in what respect are the aids of science used in this work?

We have our forensic science laboratories (which were introduced in the 1930s) and we have a national police college, which was established in 1948. These adjuncts are admirable, but confined to teaching only or to the handling of matter connected with crime that has already been committed. For example, the police college aims at preparing chosen candidates for senior rank; the laboratories in each police district examine exhibits and the like. So far in constabulary history, progress in acknowledging and coping with new phases has been mainly promoted in three ways: by individuals (e.g., the team system of policing originating in Aberdeen); by *ad hoc* committees set up by the Home Office (for instance, the study of police uniform), and by Departmental Committees (as when the Report on Detective Work and Procedure was made in 1938).

Who "feels the pulse" of the modern trend of crime? Whose duty is it to call in aid necessary but new measures to combat it? Among the older type of criminal it can be said there is an awareness of, and class distinction against, the new recruits to crime. To elaborate, the older class of criminal thinks the standards of his profession have been lowered by a new type of criminal who carries arms, and is not afraid to use them; who uses brutality and violence when dealing with elderly nightwatchmen, women cashiers, etc.—yet despite this new type of criminal, there is, broadly, no new approach in police methods. It should be asked, where is the directing energy that should apply research and trial to modern invention to determine how best it can be harnessed to police requirements in the prevention and detection of crime? For example, how

far can atomic science, television, wireless, radar and the air-plane be woven into the police fabric with advantage to the community? No one knows. The fault seems to be that police are accepted as a necessary fixture amidst a changing society. But too little regard is paid to moulding the machine to meet and overcome the modern methods of criminals. The police service is alive to the demands, but impotent to act.

We hear much of the "war against crime," yet there is no co-ordinating body of experts at present; no parallel to the Army Operational Research Group set up by the War Office to supply consistently up-to-the-minute military equipment and tactics. The ability of the police of the country to keep abreast of crime risks, to a degree, is assured, fortunately, but only by the initiative, skill and resource of individual police officers. This is naturally haphazard and spasmodic, because crime risks vary from district to district, and local measures of prevention and detection are consequently framed on more parochial than national lines.

Police dogs have been successfully trained and used abroad for almost a century; here, apart from a period of trial before the last war, and the work of individual enthusiastic police personnel now, to date no country-wide approach to the employment of dogs for tracking, patrol and guard duties is being made.

Co-ordinated progress in an organization like our constabulary is at present impracticable and unworkable. In effect, the Home Office exercises a supervisory control over each separate force in a general sense, but detailed direction and financial matters are largely in the hands of police authorities. A gentlemanly and more or less politely conducted tug-of-war is always on between the local and the central bodies. In some ways this procures a reasonably high standard, as we know it, because the one alternately and delicately insinuates back-sliding against the other. But each deals exclusively with problems of the past and cannot look outside that remarkably restricted terrain to current and future risks and needs. The bigger forces, whose financial apportionments are large, could bear the costs of much modern and necessary equipment, but how can the existing smaller units possibly afford to do so?

A centralized or regionalized police machine would, it is submitted, best meet the situation, but the cry "Gestapo" has so far sufficiently stifled this suggestion.

Police regionalization or no, it must be obvious that the creation of a police scientific and technical research branch is imperative. Staffed with appropriate scientific personnel and police officers familiar with all departments of the service, such a team could study the turns and twists of criminal minds and movements. Every fresh daily danger that offered a new threat to society would be observed and analyzed, and counter measures prepared. The constabulary would be given a helmsman persistently peering about and ahead.

The skeleton framework of the police organization has changed startlingly little in the past 125 years. The covering only has been renewed, renovated or adjusted here and there as public opinion has become alarmed, or individual police enthusiasts applied such relatively fragmentary patches as they were permitted. Unrestricted freedom of manoeuvre is afforded the criminal as he wills, but the guard and counter-attack by police is in the firm grip of too frequently paralysing and out-moded practice. It is urged that adequate tools should be placed at the disposal of the constabulary to enable it to cope properly with its very considerable responsibilities.

SALARIES OF CERTAIN SENIOR OFFICERS

[CONTRIBUTED]

Many heads of local authority departments and deputy chief officers will be disappointed with the latest agreement negotiated by Committee B of the Joint Negotiating Committee for Chief Officers of Local Authorities. It will be recalled that the functions of the Committee are to negotiate salary scales and service conditions for treasurers, engineers, chief education officers, and architects in charge of separate departments, and for all other officers, excluding clerks of authorities, occupying posts for which salaries exceed £1,000 a year. Clerks and deputy clerks of county councils are not within the purview of this negotiating machinery, and staff with salaries not exceeding £1,000 a year are subject to the negotiations of the National Joint Council for Local Authorities' Administrative, Professional, Technical and Clerical Services (except, of course, treasurers, engineers, chief education officers, and architects in charge of separate departments, who are dealt with by Committee B irrespective of the population of the authority and the consequential salary ranges attaching to those offices).

The first task of Committee B was to determine salary grades and service conditions for the few posts of treasurers, engineers, chief education officers, and architects in charge of separate departments, and the agreement in this matter was published on September 12, 1950. This agreement was subsequently, if gradually, implemented by the great majority of local authorities. The next task of Committee B was to negotiate salary scales for the deputies to the foregoing chief officers and for all officers with salaries in excess of £1,000 a year. This task was obviously one of great delicacy. The salaries of the four designated chief officers of many authorities were below £1,000 a year by virtue of the first agreement, thus impinging to some extent on the field previously covered by the National Joint Council for Local Authorities' Administrative, Professional, Technical and Clerical Services. The salaries of deputies of an even greater number of these chief officers would inevitably be less than £1,000 a year, thus making further inroads on the jurisdiction of the National Joint Council. It was clear from the outset, therefore, that there must be close liaison between Committee B and the National Joint Council in these negotiations, and a liaison committee of the two bodies was set up. Again, what should be the relation of the salary of the deputy to his principal? Some interested persons claimed that it should be seventy-five per cent. or 66½ per cent.; on the other hand there was the opposite view that it should not be a fixed relationship, as the duties of deputy in no two authorities were exactly alike. Again, there were some who favoured a sixty per cent. relationship between deputy and chief. Among deputies themselves there was at first optimism for a 66½ per cent. relationship in view of the Industrial Court award for deputy medical officers of health. Then there was the further problem of prescribing particular salary ranges for named groups

of officers other than the four already mentioned: if architects why not planning officers? And so the list could have been extended—from transport department managers to chief librarians, museum curators, and race-course managers.

It was obvious that the negotiations were not going to be easy, and information which became available during the protracted discussions confirmed that view. Most of the stages in the nearly two-year negotiating period are now merely of historic interest, and no useful purpose would be served by quoting at this stage from official circulars or officers' association bulletins published during that time. The agreement has now been published—for the present there are no further categories of special officers with prescribed salary ranges and there is no fixed percentage relationship between the salaries of deputies and their principals. There is just a series of scales between £1,000 and £2,000. These scales, set out in sch. 1 to the agreement, are as follows:

	Minimum £	Annual Increments	Maximum £
A	—	rising by annual increments to ..	1,075
B	—	rising by annual increments to ..	1,150
C	1,050	rising by annual increments of £50 to	1,250
D	1,150	rising by annual increments of £50 to	1,350
E	1,250	rising by annual increments of £50 to	1,450
F	1,350	rising by annual increments of £50 to	1,600
G	1,500	rising by annual increments of £50 to	1,750
H	1,650	rising by annual increments of £50 to	1,900
I	1,750	not less than £50	2,000

Salaries for posts above this level to be at the discretion of employing authorities.

The agreement states that in making the recommendations, the Committee were of the opinion that, except as mentioned later, local differences in duties and responsibilities attaching to posts with similar titles held by officers the subject of these recommendations are so great that decisions as to grading must be based on the conditions applying in individual cases, and that comparisons of duties and responsibilities must be made on an individual rather than a titular or national basis. In grading posts in accordance with the provisions of sch. 1, local authorities are recommended to have regard to (a) the duties and responsibilities undertaken in each case by the officer concerned, and (b) the salaries, duties, and responsibilities of officers whose remuneration has already been the subject of recommendations by negotiating bodies including the Joint Negotiating Committee and the National Joint Council for Local Authorities' Administrative, Professional, Technical and Clerical Services. In regard to the possible exceptions mentioned above, the Committee are prepared to accept the principle of uniform salary grading throughout the country for specific classes of officers, provided

it can be demonstrated that such uniform grading is practicable and desirable, and they have undertaken to consider this matter in due course if so requested by either side of the Joint Negotiating Committee. In the meantime, however, local authorities should deal with all the officers affected by the recommendations in accordance with the terms of this agreement.

The agreement provides that if the occupant of a post graded in accordance with the provisions of sch. 1 is receiving a higher salary or would progress to a salary in excess of the maximum of the scale applicable, he shall during his occupancy of that post continue to receive the higher salary or scale of salary as a remuneration personal to him. An officer who is dissatisfied with the grade fixed by his local authority for the post he occupies may appeal in the first place to the local authority, and, if the officer is dissatisfied with their decision or if the authority fail to come to a decision within a reasonable time, the matter shall be decided in accordance with another clause. This clause provides that in the event of any question arising between a local authority and any of the officers covered by the agreement regarding the interpretation or application of recommendations issued by the Joint Negotiating Committee, or any other questions relating to salaries and conditions of service which cannot be settled by the parties, the Joint Negotiating Committee are willing to consider the matter and endeavour to assist the parties in securing a settlement.

The grades provided for in the recommendations operate with effect from April 1, 1952, except in cases where an earlier date is fixed by the local authority. Local authorities are recommended to give consideration to earlier operation in appropriate cases, e.g., where the authority have undertaken to review the officer's

present position or held the matter in suspense pending any nationally negotiated recommendation, or the officer is within five years of retirement. There is no right of appeal against any decision of a local authority under this heading.

On conditions of service, the agreement provides that the officer shall devote his whole-time service to the work of the council and shall not engage in any other business or take up any other additional appointment without the express consent of the council. The officer shall enter into such fidelity bond as the council may require, the council paying the premiums therefor. The officer shall not be called upon to advise any political group of the council, either as to the work of the group or as to the work of the council, neither shall he be required to attend any meeting of any political group. Salary scales within the ranges set out in sch. 1 shall be deemed to be inclusive salary scales, and all fees and other emoluments shall be paid by the officer into the general rate or county fund as the case may be. The council shall pay to the officer approved out-of-pocket expenses. The annual leave of the officer shall be at the discretion of the council with a minimum of twenty-one working days. The provisions in relation to motor-car allowances and sick pay which are for the time being applicable to accountants and treasurers, engineers and surveyors, chief education officers, and architects, by virtue of recommendations made by the Joint Negotiating Committee for Chief Officers of Local Authorities, shall also apply to officers within the scope of these recommendations. Where an officer within the terms of the agreement enjoys terms of appointment better in any respect than those set out therein, the acceptance by the council of these terms shall not in any way prejudice the present holder of the office.

CHILD WELFARE IN AUSTRALIA

By JOHN MOSS, C.B.E.

(Concluded from Page 501, ante)

COMMITAL OF CHILDREN

A child committed as a State ward is sometimes the responsibility of the Minister, as in New South Wales, but in Victoria the secretary of the Department becomes the guardian of the child until the age of eighteen years or subject to the power of the Governor to extend the period up to not exceeding the age of twenty years. It is within the power of the secretary to transfer the child to a reformatory school and no warrant is necessary to authorize his detention. The Governor in Council may, however, at any time order any ward to be discharged when the secretary ceases to be his guardian.

In Tasmania, the court can deal with a neglected or uncontrollable child by releasing him on probation, committing the child to the care of the Social Services Department, or committing the child to an institution. Tasmania, with its small population, has not the resources of the larger States—particularly New South Wales—and when I was there I visited the only institution belonging to the State where delinquent boys of all ages could be taken and there seemed also to be some non-delinquents. A Royal Commission was considering the whole matter of child care and the members of the Commission, whom I met, were interested to hear from me about the practice in Great Britain. In Australia there is no co-operation between the States in providing for the institutional care of children committed as State wards. It seemed to me, for instance, that some of the difficulties being experienced in Tasmania as to the classification of boys could be solved if an arrangement could be made with another State to take certain types of their wards but I was assured that this would be against public policy. It seemed to me strange that the measure of co-operation which is achieved

between local authorities in Great Britain is not considered to be practicable in Australia. In Tasmania the director of the Social Services Department is the guardian of every State ward except when the child is in an institution when the superintendent or matron may exercise these powers. The Governor may, however, at any time, direct the child to be discharged. The period of the guardianship is otherwise in the discretion of the Minister up to not exceeding the age of twenty-one years.

In Western Australia the powers of the court are similar to those already outlined. The secretary of the Child Welfare Department is the guardian of each ward but there is the safeguard, from the child's point of view, that the Act makes the secretary subject to the directions of the Minister. The secretary is thus responsible for deciding on the manner in which children committed to the care of the Department shall be treated. He may, for instance, order a child to be detained in an institution. In Western Australia this would be an institution administered by a voluntary organization—mainly by the Roman Catholic Church or by the Salvation Army.

MAINTENANCE BY RELATIVES

The liability for the maintenance of children committed to the State is broadly similar in the various States. In New South Wales, "near relatives" are liable to contribute in "order of priority." This is in the following order: (a) in the case of a lawful child—father, mother, step-father and step-mother; (b) in the case of an illegitimate child—the putative father, the husband of the mother if the child was born before his marriage to the mother, and the mother. An adoptive parent is also liable. Here the amount of the order is in the discretion

of the court, but in Victoria the maximum is fixed by statute. In Tasmania, brothers, sisters and grandparents of a legitimate child are also liable. In Western Australia the liability is as in New South Wales.

ADMINISTRATION

In New South Wales the total number of cases dealt with by the children's courts in 1950 was 1,000 less than twenty-five years previously when the population was approximately fifty per cent. less. In Queensland, however, the number of children brought before the courts has increased in recent years. I saw the work of the Department in New South Wales and there is no doubt that, with its emphasis on preventative work, it can claim a fair credit for the reduction. In all the States of Australia the type of work which is undertaken in this country by the N.S.P.C.C. is the responsibility of the Child Welfare Department in association with the police and sometimes with the help of the Social Services Departments of the Churches. New South Wales is noteworthy for its recognition of the value of training in Child Welfare work. A cadet training system is in operation whereby persons desiring to progress to the field branch of the department are trained at the University in arts and social studies or in social studies alone. To permit officers who are already on the staff to undertake a course of professional training the Board of Social Studies provides special evening courses leading to the diploma of social studies. Case-work with children at home is an important function of the probation officers who are officers of the department and not of the court. Great care is taken in selecting these officers both from their practical suitability and their training in social work. They deal with both delinquents and non-delinquents. To prevent delinquency all cases of neglect, uncontrollability, wandering, truancy, petty theft and anti-social behaviour are closely investigated. The guiding principle is the rehabilitation of the family with the aim of preserving its unity. When a juvenile is placed on probation or committed to the care of an approved person, he is visited regularly by the probation officer and if he is not responding to rehabilitative measures he is taken before the court with a view to his commitment to a training school. In New South Wales, unlike other States, these schools are administered by the department and are not provided by voluntary organizations which is the general practice elsewhere. Whilst in a training school the juvenile is visited each month by his probation officer who acts as liaison between the department, the boy, the boy's home and the training school. Visits are also made to the juvenile's home to prepare for his eventual return. It is the policy in New South Wales as in other States to place children in foster homes whenever possible.

TRAINING HOMES

Training is on the lines of general home science and household management. The supervision of the attendance at school of all children is a very important function of the department, and it has been found that the association of this work with the other activities of the department is helpful. The investigation of these cases frequently leads to other problems and in many cases family case work is necessary to bring about a satisfactory attitude towards the attendances at school both on the part of parents and children. Where cases of unsatisfactory school attendance cannot be adjusted within the home and where the court considers that a period of special training is necessary boys are sent to a special residential school which is organized in two cottages each in charge of a married couple who are responsible for the home life of the boys. When the school was about to be established objections were raised by the local residents but, as in similar circumstances in this country, it has been found that since the

school was established the residents in the district have taken a great interest in the boys.

Most of the residential accommodation provided by the department is for "wayward and problem children." An officer of the department is in touch with each child from the time at which neglect or uncontrollability came to light. A court officer, who is an officer of the department, attends regularly at each of the special children's courts to assist children appearing and to advise the magistrate regarding the facilities available within the department and the community for the rehabilitation of the child. If a child is committed to an institution the determination as to which training school the child should be sent to is the responsibility of the Minister, acting normally through the Director of the department but the Minister is always available for consultation in any special case. The procedure therefore differs from that in some other States, such as Western Australia where the court may commit a child to a specified institution or alternately commit the child to the department when the decision as to the institution is a matter for the secretary of the department. Many of the children committed to a training school are released on probation to their parents as a result of the rehabilitation they have received and of the contacts maintained by the probation officers with the parents.

SYDNEY COURT PRACTICE

I visited a children's court at Sydney and sat with the magistrate. Here there is, on the same premises, a children's court, a child guidance clinic and a remand home. The court and administrative officers are located in an old house and stand in extensive grounds in the centre of the establishment. On either side of it at a distance, and standing within their own grounds are the junior and senior houses of the remand home. Boys are detained in the home in the following circumstances: (1) after apprehension for an offence and pending hearing of the case; (2) during the hearing of the case, following the magistrate's decision that it is in the interest of the boy to be so detained; (3) to permit a clinical examination; (4) upon a boy seeking refuge or upon self-surrender; (5) for temporary detention pending the transfer of a boy committed to an institution; (6) upon transfer from an institution of a boy requiring medical treatment and undergoing examinations; (7) during convalescence after hospital treatment prior to return to an institution. The results of the various tests of the boys (including educational) are later forwarded to the training school if the boy is committed. It is quite clear that the close association between the court, the probation officers, the clinic and the staff of the home have proved to be most beneficial. I saw nothing like this anywhere else in Australia but the scheme is being studied by other States. The magistrate told me that, in arriving at a decision, he is greatly assisted by the probation officer's reports and by reports from the hostel regarding the boy's general conduct, reaction to detention, response to discipline, application to work, attitude to other boys in the hostel, reliability and respect for authority. The psychiatrist who is responsible for the clinic is engaged almost entirely on the investigation of the boys appearing before the court.

The department has several training homes for boys committed by the courts. One which I visited provides training for juvenile offenders, boys from eight to fourteen years. There are in all eight separate houses and a nursing home. The boys attend a local State school. The home is very well equipped and the training arrangements are excellent. Delinquents between the ages of fourteen and eighteen years are accommodated in a home in another part of the State. This is divided into the main institution and a "privilege cottage." Upon admission, all boys enter the main institution for training. Those who appear

stable and exhibit a degree of initiative and independence of action are selected to proceed to the privilege cottage. Here individuality is promoted, supervision is relaxed, and generally the atmosphere is conducive to self-development. The organization of the school on these lines has made the problem of classification, segregation and ultimately, of training easier. I was much impressed by the whole of the arrangements in connexion with which no expense seems to have been spared. There is an excellent crafts room, a fully equipped carpenter's shop and a boot shop. The outside amenities include tennis courts which are used both by the boys and by the staff. A new playing field has been provided recently, involving excavation, building-up and levelling, which has been done by the boys at which they seemed to be very proud. The grounds are well laid out and it has been found that the growing of flowers and ornamental trees—which is a feature of all Australian gardens—has been reflected in the school. It is maintained that pleasant surroundings of this nature are just as important for boys as for girls. Here, as elsewhere, great interest is taken in the school by the neighbouring community.

Another training school provides training in rural pursuits for boys who show an aptitude for this type of work. Here there is training in every form of farming activity. Another type of institution is one which meets the needs of those delinquent youths who have absconded from an open type of institution, those whose record of behaviour necessitates special supervision, and those whom it is essential to segregate from the amenable boys at the training schools. Training schools have also been provided for girls. One deals specially with what may be called real problem cases. Special emphasis is laid upon the therapeutic value of group activity in training for citizenship. The school is therefore divided into "houses"

each being given a section of the grounds to cultivate. Marks are allotted weekly for gardening, dress, sport, care of dormitories and general work and conduct. A privilege table has been provided in the dining room for the girl in each house who gains the highest individual marks, while the house with the highest aggregate marks earns the privilege of an outing. Another school operates as the Privilege Home for girls committed to the other school. These selected girls are given an opportunity to demonstrate whether they have responded satisfactorily to the training they have received. They have many outings. Cultural interests are maintained by visiting the botanical and orchestral concerts. Each girl has her own room for which she is responsible. The last home which I visited was for fifty-eight girls of teen age. The main purpose of this school is to provide care and training for girl wards who have failed to adjust themselves in foster homes or at school.

It was a pleasure to visit these various institutions and to see how happy and healthy the children seemed to be. After they have left, many of the children and particularly the girls, look on the institution as their "old school." But it is not only in New South Wales that the interests of the children are the first consideration. Elsewhere the States are handicapped by the fact that they have to rely mainly on voluntary organizations and it is indeed fortunate that these organizations, and particularly the churches, have provided so many excellent institutions. It cannot however be easy for any child welfare department to function properly unless it has at least some institutions under its direct control. This means the spending of public money and in Parliament some States seem loathe to incur capital expenditure in this connexion however strongly it may be advocated by the department.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 69.

PERMITTING PREMISES TO BE USED AS A BROTHEL

A fifty-four year old widow appeared before the Cheltenham Magistrates recently, with five girls found on her premises with Americans at the time of a police raid. The widow was charged with knowingly permitting that part of certain premises occupied by her to be used as a brothel contrary to s. 13 (2) of the Criminal Law Amendment Act, 1885. Each of the five girls was charged with aiding and abetting in the commission of the offence, contrary to s. 5 of the Summary Jurisdiction Act, 1848.

Evidence was given for the prosecution by a police sergeant, to the effect that observation had been kept on the premises for seven evenings during a period of three weeks. During that time one hundred and thirty-three people—Americans and girls—were admitted to the house. Couples arriving at the house were received by the defendant, and some stayed for periods varying between half an hour and two hours, and others were still on the premises when observation ceased after midnight. On occasions, said the sergeant, the defendant would pin a notice on the door reading "Sorry, full up." The sergeant stated that during the course of a police raid, one of the girls was found unclothed in bed with an American who was also unclothed, and in another room another of the girls was seen partly dressed, and the bed in that room had been used.

The defendant, in evidence, stated that she believed the couples all to be married. She stated that she asked them that question before they signed the register; no rooms had been re-let on the same evening.

Statements which had been made to the police by the five girls all said that the Americans they were with were their boy-friends. One statement mentioned that the defendant widow charged 15s. per head without food.

One of the girls, a telephonist at Burtonwood, a U.S. camp, stated that as a result of her association with an American who had been posted to the Cheltenham district, she stayed week-ends at the defendant's premises. She was expecting a child and was to be married in August.

The defendant widow was sentenced to three months' imprisonment

and each of the girls was fined £5. The girls, whose ages ranged from eighteen to twenty-three, were allowed two months in which to pay their fines. The defendant widow appealed against sentence, and this was heard by the Gloucestershire Appeal Committee and they dismissed the appeal with costs. None of the girls appealed.

COMMENT

Section 13 of the Criminal Law Amendment Act, 1885, which aims at the suppression of brothels, has been the subject of many appeals, although it would appear at first blush that a charge of knowingly permitting premises to be used as a brothel would seem clear and precise. One of the most important cases dealing with this branch of the law is *Winter v. Woolfe* (1931) 95 J.P. 20, in which the Court considered what constitutes a brothel. It will be recalled that in that case there was evidence that Mrs. Woolfe, assisted by her son, ran dances in a house in a village about two miles outside Cambridge. Police observation over a period of two months established that parties of dancers attended at the house, the men being mostly undergraduates and the women of the working class type. The police saw, upon a number of occasions, sexual intercourse taking place on the premises and other acts of a lewd and indecent character, some of which were committed in the presence of Mrs. Woolfe. Although two of the women using the premises were known to the local Cambridge police as being morally undesirable characters, they had never been convicted as prostitutes, nor was there any evidence that any of the women resorting to the premises were convicted prostitutes or received any payment for the acts of indecency which had taken place. In addition, it was conceded by the prosecution that there was no evidence that the respondent received any profit from the conduct of the premises other than that arising out of the sale of teas and similar refreshments.

The justices found that the premises were used for acts of gross indecency, and for acts of fornication with the knowledge of Mrs. Woolfe, but as the women resorting to the premises were not prostitutes within the legal meaning of the definition of the word "prostitute" and as the acts of gross indecency and fornication did not amount to prostitution within the meaning of the Act, they dismissed the charge.

The Divisional Court had no difficulty in deciding that upon the facts

proved before the justices the premises had been used as a brothel. Avory, J., who delivered the leading judgment, referred with approval to the description given by Grove, J., and Lopes, J., in *R. v. Justices of Parts of Holland, Lincolnshire* (1882) 46 J.P. 312, where Grove, J., said: "What needs only to be proved is this, namely, that the premises were kept knowingly for the purpose of people having illicit sexual connexion there." Lopes, J., referring to the definition given by Grove, J., said: "That is a very complete and satisfactory definition of the whole matter."

The case was remitted to the justices to hear and determine.

A more recent decision on the section is found in *Waroquiers v. Marsden* (1950) 114 J.P. 78. In that case Waroquiers who was charged with assisting in the management of a brothel, contrary to s. 13 (1) of the Act of 1885, the offence charged being a first offence, demanded to be tried by a jury, but the learned Chief Metropolitan Magistrate held that he had no such right. The argument on behalf of Waroquiers was that, as brothel keeping has always been an offence at common law and indictable as a common nuisance, a person charged with that offence is entitled to be tried by a jury, even though the prosecution may have charged the offence as one triable summarily under s. 13 of the Act. The Divisional Court held that the learned Chief Metropolitan Magistrate was right, and Humphreys, J., in the course of his judgment, referring to the argument put forward on behalf of Waroquiers, said: "He is said to derive his right to be tried by a jury from the fact that certain acts may amount to two offences, one at common law and one under the statute, and they may be precisely similar offences. I do not find any authority for that proposition. It seems to me that the law, as it has been rightly understood ever since 1885, is that a person who is brought before a court of summary jurisdiction is liable to be treated in the manner provided for a summary offence. The mere fact that different consequences might ensue if he had been charged with some other offence, or with the same offence under another Act, seems to me to be quite immaterial."

(The writer is indebted to Mr. E. D. Watterson, LL.B., clerk to the Cheltenham Justices, for information in regard to this case.)

R. L. H.

No. 70. THE ODD CONDUCT OF A SOLICITOR

A twenty-seven year old solicitor was charged at Old Street Magistrates' Court in July last with defacing a wall by writing thereon with whitewash, without the consent of the owner or occupier, contrary to s. 54 (10) of the Metropolitan Police Act, 1839.

For the prosecution, a police sergeant produced a bag containing whitewash and a brush, and told the court that he saw the defendant painting with this equipment in letters eighteen inches high on the wall of a house in Stepney, the word "Rally" and the start of the letter "C." At that point he arrested the defendant.

The learned magistrate, Mr. Seymour Collins, told defendant, who pleaded Guilty and had nothing to say, "For a man in your position it is a disgraceful thing to be doing, going out and ruining other people's property, because that is what it comes to. You ought to be thoroughly ashamed of yourself." Defendant was fined £2.

COMMENT

It is indeed remarkable that in these days of stress and pressure of work, a solicitor can find time to devote part of what were presumably his leisure hours to the rather mundane occupation of painting on the wall of someone else's house in whitewash, and the writer regrets that the maximum penalty provided by s. 54 of this Act is 40s., which was the sum the defendant was ordered to pay. The writer has long felt that steps should be taken to bring up to date the penalties laid down by the legislature in days when money had far greater value than it has today. If Parliament in 1839 thought that the appropriate penalty for this offence was 40s. it would surely not be unreasonable to suggest that the maximum penalty today should be fixed at £10.

Section 54 of the Act sets out no less than seventeen different types of nuisance which may not be committed by persons in any thoroughfare or public place within the limits of the metropolitan police district. The antiquity of the Act is exemplified by the prohibition against any person, except "the guards and postmen belonging to Her Majesty's Post Office in the performance of their duty, blowing horns or any other noisy instruments for the purpose of calling people together etc."

(The writer is indebted to Mr. F. A. Green, Deputy Chief Clerk, Old Street Magistrates' Court, for information in regard to this case.)

R. L. H.

REVIEWS

Stephens Commentaries on the Laws of England. Twenty-first Edition. Supplement. By L. Crispin Warming. London: Butterworth & Co. (Publishers) Ltd. Price 5s. net.

This is the third supplement to appear since the twenty-first edition of the *Commentaries*, and it brings the law up to date as at April, 1952. The alterations to be made are not numerous, but tutors and solicitors who are responsible for the education of students using the main work should insist upon their obtaining the supplement, since otherwise new points (such as examiners may fasten on) are certain to be overlooked. Incidentally, the practising solicitor himself will find it useful to run through the supplement—for his own professional purposes as well as for the benefit of his articulated clerk. The plan is that the pages for small supplements issued by Messrs. Butterworth: that is, the pages are fastened on a cardboard tag which fits into the back of the book, and each correction or addition to the main work is keyed to the page number. The price of the main work with supplement is £6 15s. post free.

The Law List, 1952. By L. C. E. Turner. London: Stevens & Sons, Ltd. Price 25s. net.

The *Law List* is a familiar companion, of which it is difficult to say much in a year like the present, when no major alterations have been made. Experience since its general form was recast has confirmed the opinion that it will be more convenient for reference in its new shape than in the old. All the lists have been fully revised, and nearly all the information one would expect to find in such a publication occurs. We do not, however, understand why the town clerks of boroughs should be given, and not the clerks of urban district councils and rural district councils. Granting that there must be some limit to the information included, and therefore that petty sessional divisions (and their clerks) cannot be listed, which are of more interest to the practising lawyer than town clerks, we doubt whether there is reason to include the latter, while excluding clerks of district councils. A curious omission is that of the legal staff of the Home Office: it is truly stated at p. 85 that the Solicitor to the Treasury acts as solicitor to the Home Office, but the separate section for government offices does not mention that the Home Secretary has legal advisers on his staff. This is the more curious in that the work recognizes the existence of the Judge-Advocate-General and his staff, and his naval equivalent, and

gives the legal staffs of the Foreign Office, Commonwealth Relations Office, and Colonial Office. We should have thought there was some case for including all the legal staffs of government departments, whose names are frequently of interest to the profession, even at the cost of omitting some of the private organizations which are rather quaintly included under the head of "Law and Public Offices." The Lands Tribunal is included among public offices, but its personnel (which would often interest practitioners concerned) is not set out, except for the chairman and the registrar. These are, however, no more than points of detail, and the work as a whole maintains its long-standing reputation for accuracy, and the added convenience acquired since it was brought out in its new form.

The Law of Burial and Disposal of the Dead. By Alfred Fellows. London: Haddon Best & Co., Ltd. Price 55s. net.

The first edition of *Fellows on Burials* appeared twelve years ago and has, we understand, been out of print for some years. The subject is one which cries aloud for consolidation of the statute law, with a good deal of revision, but the learned author states in the preface to the present edition that, so far as he has been able to ascertain, immediate consolidation is not contemplated. The subject is much entangled with vested interests and religious and popular prejudice, which are amongst the reasons why consolidation has not already taken place.

There has not been much change in the statute law since the earlier edition, but such changes as there have been are of a type affecting our own readers—notably the repeal of the Burial of Drowned Persons Acts, and new provisions made by the National Assistance Act, 1948.

The general arrangement of the book is according to the order in which executors or other persons concerned would require information. It falls into three main parts, the first of which begins with establishing the fact of death, and proceeds to discuss various methods of disposing of dead bodies, with or without religious ceremonies. Part II speaks of the provision of ground for burials, and Part III of the Burial Acts. An appendix comprises miscellaneous provisions in Acts of Parliament and Church Assembly Measures which have a bearing upon burials, and there are one hundred pages of statutory instruments. The topic is thus very fully covered.

We should have liked to see more emphasis upon the right to bury a dead body in private land, instead of in a burial place provided by a

public authority or company, and certainly a more ample explanation of the rights now available to bury without religious ceremony. These are both matters upon which there is general misunderstanding among the public, with the result that, in regard to funeral ceremonies, the wishes of deceased persons are often not carried out. The law is stated, at p. 40, as regards burial without ceremony, and p. 145 as regards burials in private land, but the latter appears under the heading of "The Cemeteries Clauses Act, 1847," and hardly calls adequate attention to the common law right, of burying a body in any place where one does not infringe the rights of other persons, or to the possible encroachment upon that right (as to which so far as we are aware there is at present no judicial decision) by the Town and Country Planning Act, 1947. Apart from these criticisms we think the learned author has picked up not merely the main points of the law relating to burial, cremation, and allied matters but the less well known points as well.

An Introduction to Public Administration. By E. N. Gladden. London: Staples Press, Ltd. Price 15s. net.

The author of the present work has, we are told by the publishers, already produced a book upon the *Civil Service: its Problems and Future* and a book on *Civil Service Staff Relationships*; we gather that he holds a position in the Civil Service. The present work attempts to indicate the mode of working of the government machine, with chapters upon local government and public corporations. Too little is known generally by the public, about the working of government departments (which are an easy mark for criticism) and any serious attempt to bring home to the ordinary reader the nature of the work which they all do, and the common features of their organization and their working, is to be welcomed. Mr. Gladden sets about his task seriously and conscientiously, but we fear that task has been rather too large to be compressed into a book of 164 pages. The treatment is a mixture of the historical and the analytical, which makes it, at times, difficult to see where one stands in making a study of a particular aspect of administration. The author divides the book into twenty-six short chapters, with such titles as "What does the Civil Do"; "Organization in the Central Departments"; "The Local Government Administrator," and so forth. Each chapter is provided with a "note on further reading," which appears to indicate that the author contemplates the use of his own book for students. Our impression, upon careful perusal, is that the book falls between two stools. It contains too great a mass of detail to be readily assimilated by the beginner, but is too compressed to provide a work of reference for the experienced administrator. Nevertheless, its price is, for these days, comparatively modest and, within the limits which the author seems to have imposed upon himself, we think, it should be a useful addition to public libraries, and to the general bookshelf in a council office.

Local Land Charges. By J. F. Garner. London: Shaw & Sons, Ltd. Price 17s. 6d. net.

This is the second edition of a book which we had pleasure in reviewing when it first came out in April, 1949. The need for a new edition, so comparatively soon, arises primarily from the listing of new "charges," as a consequence of several Acts of 1949 and 1950. There has also been a certain amount of case law. We are glad to see that the cases have been provided with a full apparatus of references to reports, and, so far as we have discovered, all modern cases which have a bearing on the relevant part of the Land Charges Act, 1925, have been included. There is a special chapter dealing with the Report of the Committee on Local Land Charges, published in January, 1952, and the Committee's remunerations have been noted, where appropriate, throughout the book. The chapters are headed by references to the main classes of land charge (financial, planning, miscellaneous) and those specifically registrable by statute. There are chapters upon the enforceability of land charges, the modification and cancellation of charges, and upon some other matters.

We have not found anything dealing with the extremely awkward points under the Building Materials and Housing Act, 1945, with which we have had to deal by way of practical points within the last twelve months, but, otherwise, the learned author seems to have anticipated and given guidance upon all the points which may be expected to arise in practice.

Wages Records of Local Authorities and Public Boards. London: Institute of Municipal Treasurers. Price 20s. net.

This is one of a series of research studies into practical problems of local government finance, promoted by the research committee of the Institute. It is published by the Institute, and obtainable from them at 1 Buckingham Place, S.W.1., although they do not as a body hold themselves responsible for the opinions expressed. At the present day, the ratepayer and the consumer of products supplied by nationalized boards and other public corporations has, although he may not know it, a great interest in the wage systems adopted by local authorities

and the various corporations. Much as the ratepayer grumbles at the amount of his demand note, and the consumer at the price of electricity or transport or as the case may be, he has to recognize that (with wages rising as they have been in recent years) a great deal of the money he pays over goes into the weekly pay-packet or monthly cheque of the public employee. Most of the vast sum thus expended by the week or month would, as things are today, have to be paid out in any event, and it is obvious with so large a number of employing authorities that there will be divergencies of practice. Some of these divergencies may be accounted for by external circumstances and be more or less unavoidable. Others may be due (or at least it is reasonable so to suppose) to defective systems or failure to think out the best method. Considering that on the local authority side a large number of district auditors have for a century been studying the methods of recording wage payments, and the checks to be imposed, it seems surprising that there are still so many differences, but the same is probably true of the commercial concerns which have now been incorporated in the nationalized system. Company auditors like district auditors have probably been diffident, about seeking to enforce unanimity of system, and there has on the whole been as much gain as loss from divergence between different bodies, in so far as this has arisen from the desire of financial officers to make experiments and find the best system.

In examining the present work we have, however, been struck by the divergency of practice in comparatively simple matters, such as the amount of sick leave allowed without medical certificate, or the leave allowed, with pay, for public work. Surely in any one field, such as that of local government, or the electricity boards, it should be possible to adopt a uniform rule, either that in force under Treasury instructions in the Civil Service, or some rule worked out for the needs of a group of authorities as a whole. So again, in regard to card index and mechanical calculators, the authors have much to say about different methods ranging up to the eighty column card. To the uninitiated the details of different types of card, thirty-six column, sixty-five column, eighty column, and so forth, seem much more involved than can be necessary. As the authors say, the question of punched cards versus accounting machines is often decided by the type of machine available. It requires expert knowledge to appraise the different methods, but the conclusion to be drawn is (we think) that the expert, who will almost certainly have his own preferences, is not to be trusted too implicitly. A blend of specialized knowledge and the common sense of the ordinary councillor seems indicated. This said, we think the present study is likely to be extremely useful to the finance officers of local authorities and chairmen of finance committees, and others who take seriously the problem of producing economies in wages schemes.

Approved School Boys. By John Gittins. London: H.M. Stationery Office. Price 4s. net.

The author of this book is headmaster of the classifying school at Aycliffe, through which some 5,000 boys have passed on their way to other approved schools during the past ten years. He has had the benefit of co-operating with others in the preparation of this book, and the results of their experience and research, added to his own qualifications for the task, ensure that the work has been well and truly performed.

The public is not unnaturally disturbed about the prevalence of juvenile delinquency, and is apt to question the methods employed by the juvenile courts and by various institutions including approved schools. The average man has insufficient material upon which to form a judgment, and is thus apt to indulge in somewhat general criticism. Severity is demanded because, it is said, leniency has failed, and young criminals are indifferent to the suffering they inflict on other people. Mr. Gittins writes: "Juvenile delinquents can be so exasperating, so destructive, so rebellious, so apparently indifferent, that one's reaction is likely to be severe. This, by the queer distortion of the delinquent mind, is just the reaction that they both seek and fear, that they expect and yet hope to avoid. An understanding of these contradictions is essential since they give a reason for apparently irrational 'ambivalent' behaviour."

Such understanding can be achieved only by long and patient study, and Mr. Gittins has devoted himself to this, with the result that he presents a clear picture in such a way that the general reader, as well as the social worker, can appreciate it.

People are anxious to know what sort of boys are sent to approved schools, in what ways they differ mentally or physically from other boys, from what kind of homes they come, how they respond to training and discipline, and what they are like when they leave. The answers are to be found in this book.

The value of a period of four or five weeks in a classifying school as a preliminary to training in another approved school is sometimes questioned. It is worth noting that, according to the author, rather less than seven per cent. of boys who have passed through Aycliffe are considered to have been sent to unsuitable schools. The methods by

which the choice of school is made are described, and the place of psychology and psychiatry is discussed. It is shown that a large number of approved school boys are educationally very backward, but an argument is put forward to demonstrate that opening up of more schools for educationally sub-normal children will not necessarily reduce the number of boys and girls committed to approved schools. This is likely to provoke some lively discussion.

The price of the book is low and its contents of absorbing interest. It should be widely read, and should help to clear the minds of the many who hardly know what to think about young offenders and the way they are treated, particularly in institutions upon which a great deal of public money is being spent.

A Woman at Scotland Yard. By Lilian Wyles, B.E.M. London: Faber and Faber, Ltd. Price 18s.

Two world wars which led to the conscription of women as well as of men have made us accustomed to women wearing uniform and serving in the armed forces alongside men. It is, therefore, not easy to realize that it was not until the end of 1918 that women, then twenty-five in number, were first recruited into the ranks of the Metropolitan Police Force, and that they were for a considerable time very much on trial. They had to prove themselves by hard effort before they came to be accepted as normal members of the Force with duties for which they were more fitted, in some cases, than their male colleagues. Miss Wyles was one of the original twenty-five, and she did not retire until 1949. This book tells something of her work and her experiences during those thirty years of her life in the Metropolitan Police Force, and gives the reader considerable insight into the early difficulties which the women police had to face. Miss Wyles naturally formed decided opinions on many of the problems with which she was faced, but working in a disciplined force with male officers senior to her, and not always welcoming her assistance, she had to exercise considerable tact to achieve the best results. Her book recalls many trials which in their day excited considerable public interest, and one learns something of what happened before those cases came into court. We cannot accept as accurate Miss Wyles's way of summarizing the proviso to s. 1 of the Criminal Law Amendment Act, 1922, "Provided that in the case of a man of twenty-three years of age or under the presence of reasonable cause to believe that the girl was over the age of sixteen years shall be a valid defence on the first occasion on which he is charged with an offence under this section." We do not think this is correctly rendered by saying that the accused, until he reaches the age of twenty-three, may *presume* (unless corroborative evidence can be brought to prove otherwise) that the girl with whom he has been intimate is over the age of sixteen. We mention this because it is important that there should be no misunderstanding on this matter, and no man should be encouraged to think that he can lightly risk having sexual intercourse with a young girl.

There are no dull pages in this book. Its subject is topical, and Miss Wyles had an abundant zest for her work, and is able to tell the story of her life as a woman police officer in a way that carries the reader on easily from chapter to chapter, sure that in each fresh one there will be something of additional interest. But we do feel that there must have been occasions when the authoress got tired of taking yet one more statement from a girl who had been or who alleged she had been criminally assaulted. Miss Wyles has earned her retirement, and her readers will hope that she may long enjoy it.

Judgment of the Appellate Division in the Representation of Voters Case. Cape Town and Johannesburg: Juta & Co., Ltd. Price 2s. 6d. net.

The Appellate Division of the Supreme Court of South Africa gave judgment in March upon the case which had been argued in February, concerning the power of the Union Parliament to alter the entrenched clauses of the South Africa Act. It is most important to an understanding of the controversy in which this judgment plays its part to appreciate what was the legal point. The partisanship of many English newspapers and the unreliability of others, in dealing with South African constitutional issues, have (it is to be feared) produced deplorable misunderstanding in this country, of the issues which are now being thrashed out in South Africa. The sole point of the decision in *Harris and Others v. Minister of the Interior* was whether the Union Parliament can pass legislation altering the entrenched clauses without complying with certain procedural requirements. The South African Parliament held that it could, and the Supreme Court held that it could not. Had Parliament complied with the procedural requirements in question, it could undoubtedly have altered the entrenched clauses. The point is thus seen to be, in substance, one of procedure. It is worth noticing in connexion with the present judgment that the Appellate Division admitted itself to be departing from earlier decisions of its own, so that the Government and Parliament of South Africa had good reason for believing that the legislation now impugned would be valid.

It may be suggested, in view of the prejudice which is being stirred up in this country, that English lawyers have a special duty to their fellow countrymen here, and to their fellow subjects throughout what was once known as the Empire, to study the issues concerned and, so far as possible, to make it clear to other people in conversation and otherwise what is really happening in South Africa.

The Truth about the Constitutional Crisis. Cape Town: War Veterans Torch Commando. 1952. Price 2s. 6d. net.

This pamphlet, unlike Messrs. Juta's reprint above noticed from the South African Law Reports, is an admittedly partisan production. The charges levied by the South African Government against the Torch Commando may or may not bear investigation, but it is clear that the Commando commands large resources: that there are huge financial interests in South Africa which would be adversely affected by that Government's policy towards African and Asiatic inhabitants of the Union, and that the Commando is a body actively engaged in a bitter partisan quarrel. This pamphlet must, therefore, be approached carefully. To say this is not to deny the ability with which it is prepared. Its actual authorship does not appear, but it bears internal evidence of having been put together by competent legal hands. It is printed both in English and Dutch, and reviews the present constitutional crisis from the beginning, with ample quotations from historical and legal works and from the newspapers.

Lands Tribunal Rating Appeals. London: The Incorporated Association of Rating and Valuation Officers. Price 17s. 6d. post free.

This book of 174 pages produced (for the Association who have sponsored it) by the Estates Gazette, Ltd., promises to be extremely useful to many of our readers. It is intended that its publication shall be annual. Recent changes in the law relating to valuation appeals have led to fears that decisions of the tribunal, which has now taken the place for many purposes of the High Court, might not be so accessible as were reports of rating and valuation cases under the old system. The cases selected for inclusion are fifty-six in number, upon points of law or procedure, or other aspects of valuation, which have general interest. The cases are printed in alphabetical order of the names of appellants, and the actual decision of the Tribunal is given as completely as possible, preceded by a brief statement of the facts and the contentions of the parties. The selection includes such varied subjects as teachers' living accommodation in voluntary schools; the assessment of post-war flats; and the case to which we have already referred of *Burnell v. Downham Market U.D.C.*, upon the rateability of a playing field. Each decision is followed by an editorial comment, with references where appropriate to similar cases decided under the old law.

All the decisions of the courts which are referred to in the appeals are listed at the beginning, with a full set of references for each, and there is a subject index at the end.

The work will do much to overcome the fears which have been expressed about the difficulty about getting access to these cases. The Association are to be congratulated on this incursion into publishing, which will be useful to many other people besides their own members.

Income Tax. By R. A. Butler. London: Tower Bridge Publications, Ltd. Price 2s. 8d. net.

This useful booklet, or pamphlet, of some seventy pages has been published year by year since 1947. The author is a former officer of Inland Revenue, and he has compressed into this very small compass the essential features of income tax as seen by the ordinary taxpayer. The booklet does not pretend to compete with serious textbooks, upon income tax law or accountancy practice, but it tells the man in the street what he needs to know about the calculation of tax, personal reliefs, the most ordinary forms of income tax, and the method of collection and repayment. At this modest price it is quite worth obtaining for its own limited purpose.

PERSONALIA

APPOINTMENTS

Mr. Walter Wood, principal assistant solicitor to Sheffield corporation for the past four years, has been appointed assistant town clerk to Birmingham.

Mr. Walter Grimes of Bridgnorth has been appointed borough treasurer and rating officer at Llandidloes, Montgomeryshire.

Mr. G. P. Newton, senior probation officer to the Lancashire No. 9 Combined Probation Area, has been appointed an assistant principal probation officer in the Metropolitan Magistrates' Courts Area. Mr. Newton is to take up his appointment on completion of a course of training at the Tavistock Institute of Human Relations.

NEW COMMISSIONS

BEDFORD COUNTY

Frederick Albert Meyer, L.D.S., R.C.S. (Eng.), Church Square, Leighton Buzzard.

CANTERBURY CITY

Stanley Herbert Jennings, O.B.E., Harbledown Place, Summerhill, Canterbury.

ESSEX COUNTY

Richard Francis Thurman, Gilwell Park, Chingford.

ISLE OF WIGHT COUNTY

Herbert Frank Fleming, Luccombe Farm, Ventnor, I.O.W.
Reginald Alfred Thomas Luff, 146, Newport Road, Cowes, I.O.W.

STAFFORD COUNTY

Walter Daniel Bird, 34, Mattox Road, Wednesfield.
Sidney James Kemp, Melinden, Wedgwood Avenue, Newcastle-under-Lyme.

Mrs. Margaret Starling, The Old Post Office, Eccleshall.
Leonard Joynton Wesson, The Elms, Seisdon, nr. Wolverhampton.
John Arthur Britton, Northcote, Airedale Road, Stone.
Mrs. Gwendolyn Grace Clarkson, Colton Lodge, nr. Rugeley.
Joseph Peake, Talbot Street, Rugeley.
Mrs. Phyllis Marjorie Wood, High Street, Eccleshall.

SUSSEX COUNTY

Dr. Sidney Ronald Matthews, Little Tackers, Old Horsham Road, Crawley.

COAST PROTECTION AND NATIONAL RESPONSIBILITY

Ever since 1911, when the Royal Commission on Coast Erosion presented its report, successive Governments were pressed in vain to make statutory provision for the protection of the coastline against the inroads of the sea. It was, therefore, with no little satisfaction that the local authorities concerned learnt in 1947 that the government proposed to initiate the necessary legislation, and in due course the Coast Protection Act of 1949 became law. Suggestions during consideration of the Bill that the cost of coast protection should properly be entirely Exchequer-borne were not conceded by the government, and now that sufficient time has passed for the practical effect of the Act to be assessed, maritime local authorities are, in some cases at least, inclined to rue the day when this heavy new responsibility was imposed upon them. Nowhere is this view more firmly held than in the case of rural districts, with their long and comparatively thinly populated coastlines.

The Act, which, no doubt unavoidably, is of a complicated nature, provides broadly for dealing with coast erosion and encroachment by the sea in one of two main ways, that is, by "non-scheme" works under s. 4, whereby it is apparently contemplated that the coast protection authority (usually, but not necessarily, the county district council) will carry out works and obtain contributions towards the cost from benefiting persons on an agreed basis; or by the "works scheme" under s. 6, which is applicable in cases where compulsory powers are necessary, or where benefiting persons ought to be required to make contributions known as "coast protection charges" towards the cost. Where works are likely to be of any magnitude, or where many individual properties are involved, it is almost certain that recourse to a works scheme will be necessary, and this at once sets in train a complex and protracted procedure, rife with legal and administrative difficulties, delays and expense.

The coast protection authority, having received the report of their consulting engineers on the works required (a report which in itself will probably take long and cost much), and after devoting the time necessary to consider the engineering proposals in detail, decide dutifully that a works scheme is called for, and turn their attention, as they must, to the question of the cost, a cost which, bearing in mind the enormous quantities of timber, concrete and steel which a scheme of any dimensions will consume, is bound to amount to a very large sum indeed, a £1m. not being out of the way for a rural district with a long coastline. Further must the coast protection authority consider in what way that cost can be met. Under the Act it is intended that expenditure will be defrayed from four sources: the Exchequer, by way of grant; the county council likewise; benefiting owners by the payment of coast protection charges; and the balance from the district rate.

Under s. 21 of the Act the Minister, subject to any conditions imposed by the Treasury, may or may not make a grant towards the cost of the scheme as he thinks fit, and although it can be assumed that due regard will be had to the financial situation of the county district concerned, it is entirely within the Minister's discretion what amount, if any, is payable. Under s. 20, the county council are obliged to make their contribution only where the Minister is doing so, and then in the absence of agreement between the two authorities for a total annual sum in respect of the whole county coastline not exceeding the product of that county's penny rate. The amounts derivable from both sources may thus be described as highly conjectural and even capricious, and may well leave a very wide gap to be bridged by the two remaining contributories, *viz.*, the persons liable to pay the coast protection charge and the district rate.

What then of the coast protection charge? If the authority have decided that these charges should be paid, and it is likely that they will usually do so, whether of their own volition or by the act of the Minister, they must under s. 7 (1) specify in the works scheme an area of "contributory land" in respect of which coast protection charges are to be payable under the scheme on the ground that the land in question will be benefited by the carrying out of the work provided for by the scheme, while under s. 7 (3) those charges shall, roughly speaking, not exceed the difference in value of the property protected and unprotected. In the absence of any obvious topographical demarcation such as, say, an inland embankment or escarpment separating low-lying land to seaward from the remainder of the district, it is evident that the fixing of the boundary of the area of the contributory land is bound to be of an arbitrary nature. Keeping in mind the effect on the value of any property that inclusion in the area of contributory land will undoubtedly have, it is highly probable that the most strenuous opposition will be offered to this part of the scheme by the persons concerned, either under s. 7 (6) where the determination of the charge may be the subject of appeal to the Minister, or s. 7 (7) where the amount may be referred to arbitration, or under s. 8 (4) (c) where objection may be made that land included as contributory land should be excluded or *vice versa*. Coast protection charges are, therefore, likely to be hotly contested, and their sum total to be on the lower rather than on the higher side. There only remains the district rate, which in all the circumstances outlined above, while not necessarily bearing the full brunt of the cost, may well be required to shoulder the greater part of the burden, which one should never forget in the consideration of coast protection matters will assuredly be of the order of very many thousands of pounds. Such vast expenditure is sufficiently serious for the seaside borough or

urban district with its short, compact coastline, but these places are for the most part pleasure resorts where protective works can take the form of a highly-important revenue producing asset in the shape of a promenade and its ancillaries, but in the case of a rural district, with its many miles of mainly agricultural coastline, the financial burden may be well nigh unbearable.

Grim though this prospect is, there are further onerous responsibilities to be faced. Anyone with experience of engineering works subject to the assaults of nature knows full well how heavy and unceasing is the need for and the cost of maintenance and repair, and the onslaughts of the sea are the cruellest and most relentless of them all. Yet under the Act the entire cost of maintaining scheme works is payable from the district rate, without relief or grant from any other source.

At the same time, particularly in a rural district, many private persons in the past, in default of action on the part of the legislature have spent large sums of money in providing their own sea defences. Certainly under the Act it is theoretically possible, subject to considerable legal and procedural difficulty, to require owners to keep their private defences in repair, but, many councils, as a matter of common fairness, will probably take the view that while such persons through the district rate

are helping to pay the cost of new works where none existed before, they should not in addition be penalized for their own prudence and expenditure in the past, and that the maintenance of their own defences should also be met from the district rate.

The Royal Commission in 1911, we are told, expressed the opinion that the cost of coast protection should not be at the charge of the national Exchequer, but that, after all, was in 1911, and however cogent the reasons may have been in those days, it is submitted that they are doubly irrelevant to the conditions of 1952. With the compelling need for increasing home food production and the vast extension and speeding-up of communications today, our pleasure resorts and beaches are enjoyed, not by the busy boarding-house keeper in the seaside town, nor the hard-working farmer growing food for the nation's larder on his acres by the shore, but by the great multitudes of our fellow countrymen from inland. Every mile of sandy beach, and every acre of ground is a priceless national asset and should accordingly be safeguarded out of the nation's purse.

Is it too much to hope, therefore, that the justice of this viewpoint will be recognized, and the 1949 Act be replaced by a measure wholly transferring the grievous burden of coast protection to the broader shoulders of the national Exchequer.

AGRICOLA.

A BARK AND A BITE

The tendency among animals to participate in human activities, and even to figure as protagonists in the courts, is once more in the news. In West London an injunction has been sought, and granted, to restrain a brindle-terrier from barking; in Paris a *restaurateur* has been fined for an assault in which his accomplice was a lobster. In neither case so far has there been such notice from legal commentators as the importance of the subject would appear to demand.

In the former case the plaintiff claimed that Bob, the offending terrier, had been barking noisily and continually, for long periods, by day and night, causing to the plaintiff disturbance and lack of sleep. In the course of her testimony she made the surprising allegation that the barking was chiefly in evidence on Wednesdays and Sundays. The learned County Court Judge expressed some natural surprise that the dog should choose two particular evenings each week for the exercise of his vocal chords; but what promised to be a fruitful line of inquiry was closed by the prosaic explanation that these were the times when the owner was in the habit of going out and leaving the animal alone. This attempt to rationalize a profoundly interesting phenomenon will satisfy nobody—least of all the dog-lovers.

The influence of calendrical changes upon canine behaviour must, in fact, at some time in the remote past, have become so obvious that it has left its mark on astronomical science. Everybody knows that Sirius, the brightest star in the heavens, is called the Dog-star, being part of the constellation *Canis Major* which is associated with Orion. The period of the year when Sirius rises and sets contemporaneously with the sun has been known since Homeric times as the Dog-Days; among the Egyptians, the Greeks and the Romans it was always reckoned a most sultry and unhealthy time, and in our calendar it corresponds to the period from July 3 to August 11. A little research on the part of those concerned in the recent case would no doubt have shown that the sagacious animal was well aware of the traditionally evil reputation of the present hot season, and was conveying, in his own language and with suitable emphasis, at regular intervals, a warning to his human friends to take the necessary precautions for the preservation of their health.

Nothing we have said is to be taken as a criticism of the action

of the learned judge in granting the injunction prayed for; nobody can suggest that he was in a position to take judicial notice of facts which were not tendered in evidence before him. But the episode illustrates once again the danger of an advocate's approaching a complex problem from too narrow a viewpoint, of failing to appreciate the importance of motive and of under-rating the intelligence of a creature which so well deserves the appellation of the Friend of Man.

The Parisian case is equally illustrative of the fidelity of those members of the animal kingdom who find themselves brought, even in the most unfavourable circumstances, into contact with human beings. A diner in a Paris restaurant ordered a portion of lobster, and was invited to make his choice from a basket of live crustaceans placed before him by the proprietor. The client, having sniffed at the contents of the basket, alleged that the lobsters were not fresh; the *patron* replied in suitably vigorous language and, in the ensuing altercation, to add emphasis to his words, drew out and brandished a lobster in the client's face. This display of Gallic enthusiasm seems to have infected the object of the dispute; with a self-sacrificing disregard of its own equivocal situation and prospective fate the lobster identified itself whole-heartedly with its master's cause by seizing the diner's nose with its claws and hanging on like grim death for several minutes.

The newspaper report gives only the result of the ensuing case in the magistrate's court—damages against the proprietor of 100,000 francs and 3,000 francs in fines. It tells us nothing that we really want to know—whether the lobster was held to be a principal in the first or second degree, or merely an innocent agent, and whether the law of France recognises the doctrine that every lobster is entitled to his first nip. The lobster seems to us to have acted under extreme provocation with commendable fortitude and restraint; and since the nose of the client was the offending organ in the first place, the action promptly taken by the creature which had suffered the main aspersion was a clear and justifiable application of the *lex talionis*—the law of direct retribution. If the plaintiff has, in the current phrase, had his nose put out of joint, he has only himself to blame for poking it into places where it had no business. A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Children and Young Persons—Children in care under Children Act, 1948, s. 1.—Mother has obtained order giving her custody and arranges for children to remain in care—Father demands children from local authority.

A mother and two children were turned out of their home by the father. The mother obtained accommodation with her parents who were not, however, in a position to accommodate the two children. The children were accordingly received into the care of the local authority under s. 1 of the Children Act, 1948. The mother then summoned the father for cruelty and the justices made a married woman order against the father and gave the mother the custody of the children, though the children remained in the care of the local authority on account of the inability of the mother to provide accommodation. The father later obtained the services of a housekeeper and applied to the local authority for the children to be returned to him.

In view of the provisions of s. 1 (3) of the Children Act, 1948, which states nothing in that section shall authorize a local authority to keep a child in care under that section if any parent or guardian desires to take over the child, is the father entitled to have the children or does the grant of custody to the mother over-ride such provision? In the event of the father not being entitled to have the children is he still legally liable to contribute towards their maintenance while they remain in the care of the local authority? SORA.

Answer.

We think the local authority should give effect to the court order which gave custody to the mother by declining to hand over the children to the father against her will. It is not really s. 1 of the Act of 1948 so much as that order which justifies such refusal.

We suggest that if, as seems probable, the habits or mode of life of the father are such as to render him unfit to have the care of the children, the local authority might consider passing a resolution under s. 2 so that the mother and the local authority can exercise parental rights jointly so long as may be necessary.

We consider the father is liable to make contributions in respect of the maintenance of the children under s. 23 of the Children Act, 1948.

2.—Easement—Prescription running—Protest by owner of servant tenement—No physical interruption.

The ownership of a wall is in dispute between A and B. A erects an outhouse leaning on to the wall. B writes to A protesting, claiming that the wall is his. Assuming the wall to be B's, can A acquire a prescriptive right to support after twenty years, notwithstanding B's objection in the first instance? ESO.

Answer.

Yes; a protest does not seem to be an interruption such as is contemplated by s. 4 of the Prescription Act, 1832. B should either remove the structure, leaving A to such remedy as he may be advised to take, or should himself 'ake legal proceedings.

3.—Food and Drugs—Provision of hot water in accordance with s. 13 of Act of 1938.

The council have recently been considering the provisions of s. 13 (1) (i) of the Food and Drugs Act, 1938, in connexion with the supply of hot water. The section provides that "there shall be provided . . . a sufficient supply of . . . clean water, both hot and cold for the use of persons employed in the room" and it might, therefore, be that a gas ring and kettle would be sufficient to satisfy the section. On the other hand, it has been contended that the council can insist on a constant supply of hot water being available.

It is felt that unless a constant supply of hot water, e.g., through an Ascot heater, is available, no one will trouble to boil a kettle of water for the purpose of washing their hands. I have not been able to find any authoritative decision on the point and I shall be glad of your advice whether or not a gas ring and a kettle would be a sufficient compliance with the terms of the section. S. AQUA.

Answer.

We think the object of this provision is to ensure that hot water is always readily available. The best arrangement is no doubt hot and cold in constant supply from taps, or failing that a geyser or other apparatus which involves no trouble or delay. We doubt whether the section contemplated a kettle and a gas ring so that anyone wishing for hot water must wait for the kettle to boil, unless the kettle is constantly kept hot on a low jet. We think, however, that if a kettle of water is always kept over a low gas jet, so that really hot water can quickly be obtained by turning up the gas, this really amounts to a primitive sort of geyser and that the Divisional Court, if the question ever reached them, would hold that it satisfied the requirements of the section.

4.—Highway—Collapse of retaining wall—Disused cellar.

In your opinion would the answers given to the question 97 at p. 138 of Questions and Answers from the Justice of the Peace, 1938-1949, be the same in a case where the wall supporting the highway was the cellar wall of a house which has been demolished under a demolition order? In the case I have in mind, the cellar was excavated after the road was made and the house subsequently demolished down to the level of the road. The cellar walls which were left to support the highway have crumbled and part of the footpath has subsided.

D.R.E.H.

Answer.

We think so. There seems no ground for suggesting that the demolition order excuses the owner (who could have filled up the cellar) from the duty which, in our opinion, rests upon him, any more than he would have been excused if he had voluntarily pulled down the house and left the cellar unfilled.

5.—Magistrates—Practice and Procedure—Rates summons—Need for proof on oath of service.

I shall be obliged if you will advise me whether it is essential that proof of service of summons for the recovery of rates should be given upon oath before magistrates can issue a warrant to distrain. This appears to be the case under the Act and is so stated in the form of warrant but it has been suggested that service can be proved to be served in the same manner as ordinary criminal process. J.R.V.

Answer.

We think that proof on oath is not necessary, and that service can be proved by certificate as provided in s. 2 Service of Process (Justices) Act, 1933.

6.—Probation—Requirement to lead an honest and industrious life—Child failing to attend school.

A few months ago a young person, A, appeared before the juvenile court at X charged with larceny. He was found guilty and a probation order was made for a period of twelve months. A condition of the order was that A should lead an honest and industrious life.

A is due to leave school in the near future and his attendance at school has become very infrequent. Visits to the home by the probation officer indicate that A is spending his time running errands and doing odd jobs for his parents and for neighbours.

It has been suggested that A should be summoned to appear before the juvenile court for a breach of the probation order on the grounds that he is not leading an honest and industrious life, i.e., he is not attending regularly at school.

I am aware that other remedies and proceedings may be available, but in the particular circumstances of this case, it is not considered they are suitable or desirable.

Do you agree with the view that A's failure to attend school constitutes a breach of the above mentioned condition of the probation order? S. ABC.

Answer.

In view of the criticism of this kind of requirement by the Lord Chief Justice, any alleged breach needs to be considered carefully. As there was no specific requirement in the probation order as to school attendance, and as a child might be industrious in other ways although not attending school, we do not consider it advisable to proceed for failure to comply with the requirement to lead an honest and industrious life. As is pointed out in the question, there are other ways of dealing with irregular school attendance, and therefore we dislike the idea of making the child liable to be dealt with for his original offence on that ground of complaint alone.

7.—Real Property—Wall dividing curtilages—Determination of ownership.

It is desired to bring before the court the owners of a dangerous wall, pursuant to s. 58 of the Public Health Act, 1936. The wall is 140 feet in length, and rises to a height of twenty to twenty-five feet above ground level. At ground level there are houses, the gardens of which abut on the wall; some outbuildings of these houses are built on to the face of the wall itself. At the top of the wall there are houses and cottages; some outbuildings of these cottages are built on the wall itself. About half the whole length of the wall is dangerous and should be shored up; major works of repair will afterwards be necessary. The owners of the abutting properties disclaim all ownership in the wall. If possible it will be necessary to recover the expense of shoring up under s. 58 (3) and when the damage has been ascertained after shoring, to bring the owners of the wall before the court under s. 58 (1).

with a view to obtaining the necessary order for the carrying out of repair.

Your opinion is therefore sought as to

(1) Upon what principles the ownership of the wall is to be determined.

(2) In the absence of express proof as to the ownership of the wall, could the corporation safely take proceedings under s. 58 against the owners of all the properties abutting on the damaged portion of the wall, on the ground that the ownership thereof must be vested in all such owners?

(3) If ownership of the dangerous portion of the wall could be established to one or more owners of the abutting properties, but not to all of them, could proceedings under the above mentioned subsections be taken against the owners whose proof of ownership could be established in respect of the whole of the damaged portion of wall, or would the proceedings have to be limited to the portion of the wall abutting on to their properties?

(4) In the absence of express proof as to the ownership of the damaged portion of the wall, is there any course open to the corporation other than that of undertaking the repairs of the wall themselves?

CLEAT.

Answer.

The ownership of any piece of property is in the last resort a question of fact: that is to say, of evidence so far as procurable and otherwise of inference. Where the question concerns a wall dividing other properties, there is some analogy with the well known argument about the ownership of country ditches and hedges, but, as upon that question, there can be no conclusive presumption. In the last resort, failing evidence, the fact finding tribunal has to weigh probabilities with its eye on the particular topography.

A man building at the foot of a slope may be expected, if he can, to dig into it to provide as much level ground as he needs, or thinks worth while. If he digs far, he must build a retaining wall to protect his curtilage, and this wall must be on his own land. Similarly a man building at the top of a slope often wants a level curtilage and, when he builds a house with access from a road above it, he may dig away below the level of his house. The dug out soil is most naturally got rid of downwards, i.e., by forming a level platform and this, if it is to remain level, must be kept in place by a retaining wall. Such a wall must, like the one previously mentioned, be on the man's own land.

The point on his land at which either of the men mentioned places his wall will be determined by the quantity of level ground he wants, and the cost of digging it. It will not necessarily be at his boundary; indeed, the cost of digging, and the strength needed for the wall, increase progressively the further back it is pushed—hence the more or less unused pieces of sloping ground (to be seen in every hilly area) on the further side of retaining walls. Nevertheless, a wall serving as a retaining wall for a property above it and for a property below it is probably at the boundary. Note that we say "at," not "on," for such a wall can have been built by the first of the owners who excavated, and the other may then have excavated lower down the slope or higher up the slope as the case may be.

In the case before us, it seems that both downhill owners and uphill owners have performed acts which *prima facie* were either trespasses or acts of ownership, by building against the wall from below and upon it from above. Let these be regarded as trespasses when performed: even so, an easement at least, and in some cases a possessory title to part of the wall, may have been created by now.

The only other line of thought which occurs to us is to find out, from old maps, rate books, etc., whether the uphill or downhill property was first built upon. There may be a probability, since the wall seems to be continuous, that it was erected as a whole by an owner developing either the uphill or the downhill frontage of the slope. But, even so, the breaking up of the property into cottage holdings, with multiple trespasses from above or below as the case may be, could have changed the ownership of sections of the wall by now. The suggestion (which seems to underlie question 2) that the whole wall can be treated as owned jointly by all the abutting owners is surely an impossible one: this for practical reasons, even apart from s. 34 of the Law of Property Act, 1925, when once the land above and below has been split into small ownerships.

In default of evidence or any surer foundation for inference than has been given to us, we should accordingly treat the whole length as a succession of party walls, belonging to the uphill and downhill owners, and proceed against them in pairs accordingly. None, of course, can on this line of thought be held liable for more than his half of his own piece of wall.

There is, at least, enough plausibility (we think) in this line of thought to dispose the court to accept it, unless any owner who disputes the council's claim can construct a better argument.

8.—Road Traffic Acts—Road Transport Lighting Act, 1927—Forecourt of a shop—No barrier between it and pavement—Habitually used by public as part of the pavement—*Thomas v. Dando* [1951] 1 All E.R. 1010.

In view of the recent decision in *Thomas v. Dando*, I should be very much obliged if you would be so good to inform me if, in your opinion, an offence is committed under the Road Transport Lighting Act, 1927, in the following circumstances.

A shopkeeper leaves his unlighted motor car at night parked on the forecourt of his shop premises. The forecourt is paved, is about the same width as, and is in no way separated or distinguished from, the paved footpath. The forecourt is habitually used by the public as a footpath when they are walking along the street and as the shop is situated at the corner of the street, (the car being parked on the forecourt just round the corner) it is very much more used by the public about to turn the corner from one street into the other. JON.

Answer.

This is a borderline case. On the whole we think that if a court found as a fact that the public habitually use this forecourt as part of the pavement they would be justified in finding that the forecourt is a road within the meaning of s. 1 (1) of the Act of 1927.

9.—Road Traffic Acts—1930 Act, s. 12—Forecourt of a hotel—Is it a "road" for the purposes of s. 12?

There is a main road running through a large village near here and a public house faces upon such road. In front of the public house there is a cobble forecourt upon which is a well formerly used by the village in general and cars are accustomed to park on this without charge. I understand that when the local race meeting is held the publican, rightly or wrongly, has taken a parking fee. In manoeuvring a breakdown van which at the time was entirely on these cobbles, the crane on the van did some damage. Is there any relevant case to which you can refer me about the meaning of "Highway" in s. 12 of the Road Traffic Act?

I should make it clear that the road is a trunk road and has a tarred surface and the cobble forecourt is triangular, the long side of the triangle being adjoining the trunk road and the other two sides of the triangle being bounded by the public house. JARD.

Answer.

We think the *Bugge v. Taylor* (1941) 104 J.P. 467 is relevant. It was a decision on the meaning of "road" in s. 1 of the Road Transport Lighting Act, 1927. Other cases, not so clearly in point, are referred to in *Stone*, 1951 edn., at p. 2121, note (d).

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LINCOLNSHIRE COMBINED PROBATION AREA

Appointment of Male Probation Officer

APPLICATIONS are invited for the appointment of one additional full-time Male Probation Officer for the Lincoln district.

The appointment and salary will be subject to the provisions of the Probation Rules.

The successful candidate will be required to pass a medical examination.

Applications should reach me not later than August 25, 1952, and should state date of birth, qualifications, experience in probation and social work, present employment and salary, and the names of two referees.

H. COPLAND,

County Offices,
Lincoln.

Secretary.

COUNTY BOROUGH OF EASTBOURNE

Appointment of Superintendent of Police and Deputy Chief Constable

APPLICATIONS are invited from suitably qualified police officers of not more than forty-five years of age for appointment as Superintendent of Police in the Borough Police Force. The salary on appointment will be £850 per annum rising by annual increments of £25 to £900, plus the allowances laid down in the Police Regulations, but subject to the statutory deductions.

The successful candidate will also be appointed Deputy Chief Constable, for which he will, subject to Home Office approval, be paid £50 per annum.

Applications, endorsed "Superintendent of Police," stating age, qualifications and experience, accompanied by copies of not more than three recent testimonials, must be sent to the undersigned to arrive not later than August 30, 1952.

The successful candidate will have to undergo a medical examination.

Canvassing, either directly or indirectly, will be deemed a disqualification.

F. H. BUSBY,

Town Hall,
Eastbourne.
August 5, 1952.

Town Clerk.

USK RIVER BOARD

Appointment of Clerk to the Board

APPLICATIONS are invited for the whole-time appointment of Clerk to the Board, who will be responsible, as Chief Executive Officer, for co-ordination and supervision of the Board's activities. Applicants must be admitted solicitors, and preferably have had previous experience with a River Board, Catchment Board or a Local Government Authority.

Salary commencing within the range of £1,250—£1,350 per annum, according to experience, rising by annual increments of £50, to a maximum of £1,500 per annum.

The post is subject to the Local Government Superannuation Act, 1937.

Applications on forms, which, with terms and conditions of the appointment, will be supplied on receipt of stamped addressed foolscap envelope, should reach the undersigned not later than Friday, August 22, 1952.

VERNON LAWRENCE,

Acting Clerk to the Board.

County Hall,
Newport, Mon.

LANCASHIRE (No. 2) COMBINED PROBATION AREA

Appointment of Senior Probation Officer

APPLICATIONS are invited for the above appointment. Applicants must be serving Male Probation Officers with experience. The officer will be centred at Preston. The appointment will be subject to the Probation Rules, 1949-1952. Salary according to scale, with seniority allowance of £100 per annum, and mileage allowance for use of private motor-car. Applications, with full particulars, together with the names and addresses of two persons to whom reference may be made, should reach the undersigned not later than August 30, 1952.

W. A. L. COOPER,

Clerk of the Committee for the above area.
Magistrates' Court,
Lancaster Road, Preston.

COUNTY BOROUGH OF BLACKPOOL

Appointment of Prosecuting Solicitor in the Department of the Town Clerk

APPLICATIONS are invited for the superannuable appointment of Prosecuting Solicitor in the Department of the Town Clerk, at a salary in accordance with A.P.T. Grade VII—(£685—£760 p.a.) of the National Scale of Salaries (A.P.T. Grade V(a)—(£600—£660 p.a.) during the first two years of professional experience after admission). Experience and qualifications will be taken into account in fixing the commencing salary within the Grade.

The duties of the successful applicant will be mainly concerned with the conduct of court and other legal proceedings on behalf of the Corporation and the Chief Constable, and conveyancing.

Candidates must be capable advocates. Municipal experience, though desirable, is not essential.

Further particulars, conditions of appointment and form of application, may be obtained from the undersigned.

Completed forms of application should reach me on or before August 23, 1952.

TREVOR T. JONES,

Municipal Buildings,
Town Hall Street,
Blackpool.

Town Clerk.

COUNTY BOROUGH OF BLACKPOOL

Appointment of Assistant Solicitor in the Department of the Town Clerk

APPLICATIONS are invited for the superannuable appointment of Assistant Solicitor in the Department of the Town Clerk, at a salary in accordance with A.P.T. Grade VII of the National Scale of Salaries (A.P.T. Grade VI during the first two years of professional experience after admission). Experience and qualifications will be taken into account in fixing the commencing salary within the Grade.

Previous Local Government experience essential. Advocacy desirable.

Further particulars, conditions of appointment and form of application may be obtained from the undersigned.

Completed forms of application should reach me on or before August 30, 1952.

TREVOR T. JONES,

Municipal Buildings,
Town Hall Street, Blackpool.

Town Clerk.

CITY OF BRADFORD

Assistant Clerk to the Justices

APPLICATIONS are invited for the above whole-time appointment at a salary of £670/£735. (Grade A.P.T. VI). Applicants should have had extensive experience of the duties of an assistant to a Justices' Clerk including taking of depositions and issuing process and be able to act as clerk to a fourth Court sitting daily. The appointment is superannuable and the successful applicant will be required to pass a medical examination.

Applications, stating age, qualifications and magisterial experience, together with copies of not more than three recent testimonials, should be sent to the undersigned not later than September 6, 1952.

FRANK OWENS,

Clerk to the Justices.
Magistrates' Clerk's Office,
Town Hall, Bradford.

CITY AND COUNTY OF THE CITY OF EXETER

Appointment of Assistant Solicitor

APPLICATIONS are invited for the above appointment at a salary in accordance with Grade VI (£670—£735) or Grade VII (£710—£785) (according to experience) in the Administrative, Professional and Technical Division of the National Joint Council's Scheme of Conditions of Service.

Applicants must be solicitors experienced in conveyancing and advocacy. Municipal experience will be an advantage.

The appointment will be subject to one calendar month's notice on either side, and to the provisions of the Local Government Superannuation Act. The successful applicant will be required to pass a medical examination.

Applications, stating age, qualifications and full details of previous experience, together with copies of three recent testimonials, should be sent to the undersigned at 10, Southernhay West, Exeter, not later than Monday, September 8, 1952.

Canvassing of members of the Exeter City Council, directly or indirectly, in connexion with the appointment will disqualify.

C. J. NEWMAN,
Town Clerk.

Exeter.
August 7, 1952.

COUNTY OF BUCKINGHAM

THE Buckinghamshire Probation Committee invite applications for the appointment of a whole-time female Probation Officer to serve in the central and northern part of Bucks.

The appointment and salary will be subject to the Probation Rules, 1950 and 1952. Applicants must be not less than 23 nor more than 40 years of age, except in the case of a serving whole-time Probation Officer. The selected candidate will be required to pass a medical examination, and to provide a car, for which the current mileage allowances of the County Council will be paid. Applications, stating age, present position, qualifications and experience, together with the names of at least two referees, should reach the undersigned not later than September 15, 1952.

GUY R. CROUCH,

Clerk of the Peace for Bucks.
County Hall,
Aylesbury.

MIDDLESEX COMBINED PROBATION AREA**Appointment of Full-time Male Probation Officer**

APPLICATIONS are invited for the above appointment. Applicants must be serving Probation Officers, or persons between the ages of 23 and 40 possessing recognized social service qualifications. Appointment and salary according to Probation Rules, 1949/1952, with £30 Metropolitan addition. Subject to superannuation deductions and medical assessment. Application forms, from the undersigned, to be returned by September 6, 1952 (quoting L.81 J.P.).

C. W. RADCLIFFE,
Clerk to the County Probation Committee.

Guildhall,
Westminster, S.W.1.

MIDDLESEX COMBINED PROBATION AREA**Appointment of Senior Probation Officer**

APPLICATIONS are invited for the appointment of a Senior Probation Officer. Applicants must be serving Probation Officers with experience. Salary according to Probation Rules, 1949/1952, with £30 per annum Metropolitan addition and seniority allowance of £75 per annum. Subject to superannuation deductions and medical assessment. Motor-car allowance provided. Application forms, from the undersigned, to be returned by September 6, 1952 (quoting L.82 J.P.).

C. W. RADCLIFFE,
Clerk to the Probation Committee.

Guildhall,
Westminster, S.W.1.

BOROUGH OF GLOSSOP**Appointment of Town Clerk**

APPLICATIONS are invited from Solicitors with previous Municipal experience for the appointment of Town Clerk. The salary will be at the rate of £1,000 per annum, rising by annual increments of £50 to a maximum of £1,200 per annum. The successful candidate will be required to devote the whole of his time to the statutory and other duties of the post.

The appointment will be in accordance with the recommendations of the Joint Negotiating Committee for Town Clerks and District Council Clerks as to salary and conditions of service and will also be subject to the provisions of the Local Government Superannuation Acts, and to termination by three months' notice on either side. The successful candidate will be required to pass a medical examination.

Applications, endorsed "Town Clerkship," giving full particulars of age, past appointments, qualifications and experience, with the names and addresses of three referees, must reach me by September 6 next.

Applicants must state whether, to their knowledge, they are related to any member or Senior Officer of the Council.

Canvassing, directly or indirectly, will be a disqualification.

W. S. A. ROBINSON,
Town Clerk.

Municipal Buildings,
Glossop.

August 6, 1952.

HERTFORDSHIRE COMBINED PROBATION AREA**Appointment of Full-time Male Probation Officer**

APPLICATIONS are invited for the above appointment.

The appointment will be subject to the Probation Rules, 1949, 1950 and 1952, and the salary will be in accordance with such Rules and subject to superannuation deductions. The successful applicant will be required to undergo a medical examination.

Forms of application may be obtained from the undersigned, and applications should be received by me not later than August 30, 1952.

NEVILLE MOON,
Clerk of the Probation Committee.

County Hall,
Hertford.

August 16, 1952.

COUNTY BOROUGH OF WALSALL**Assistant Solicitor**

APPLICATIONS are invited for the above appointment at a salary in accordance with Grade A.P.T. VIII (£735 rising to £810 per annum by annual increments of £25). Applications, endorsed "Assistant Solicitor," and accompanied by copies of not more than three recent testimonials, should be sent to the Town Clerk, Walsall, not later than first post on Monday, September 1, 1952. Canvassing in any form will be deemed a disqualification, and applicants must disclose any relationship to any member or officer of the Council.

BOROUGH OF NUNEATON**Assistant Solicitor**

APPLICATIONS, to be delivered by September 1, are invited for this appointment.

Salary, A.P.T. Division Grade Va (£600—£660); or Grade VII (£685—£760) according to experience.

Local government experience is desirable but not essential.

Further particulars are obtainable from the Town Clerk, Council House, Nuneaton.

BOROUGH OF WALTHAMSTOW

- (a) Deputy Town Clerk
(b) Assistant Solicitor (Grade IX)

APPLICATIONS are invited from Solicitors for the following appointments:

(a) Deputy Town Clerk—£1,350 × £1,500 per annum.

(b) Assistant Solicitor—A.P.T. Grade IX (£815 × £935 per annum) plus London Weighting of £30.

Applicants must have for post (a) considerable experience of local government law and administration, and for post (b) a sound knowledge and experience of advocacy and conveyancing, previous local government experience being desirable but not essential.

Applications, stating age, qualifications and experience, together with the names of three persons to whom reference may be made, and endorsed "Deputy Town Clerk" or "Assistant Solicitor," should be sent to the Town Clerk, Town Hall, Walthamstow, E.17, not later than September 3, 1952. Canvassing will disqualify.

Corrected advertisement

BOROUGH OF SOUTHGATE**Appointment of Second Assistant Solicitor**

APPLICATIONS are invited for the appointment of Second Assistant Solicitor. Applicants must have a sound knowledge of conveyancing (including Land Registry practice), and Police and County Court procedure. Salary, according to experience and date of admission, within A.P.T. VI/VII (£645—£760 per annum) plus the appropriate "London Weighting" allowance.

Superannuable post, subject to medical examination. National Scheme of Conditions of Service apply. The person appointed must devote his whole time to duties of the office and must not engage in private practice.

Application forms, obtainable from the undersigned to whom they should be returned, with the names of two referees, and endorsed "Appointment of Second Assistant Solicitor." Closing date August 30, 1952. Canvassing will disqualify.

GORDON H. TAYLOR,
Town Clerk.

Southgate Town Hall,
Palmers Green,
London, N.13.

WARWICKSHIRE COMBINED PROBATION AREA**Appointment of Whole-time Female Probation Officer**

APPLICATIONS are invited for the appointment of a whole-time Female Probation Officer for the Warwickshire Combined Probation Area.

Candidates must not be less than twenty-three nor more than forty years of age, except in the case of a serving whole-time probation officer.

The appointment will be subject to the Probation Rules and the salary will be in accordance with such Rules, subject to deductions for superannuation. The successful applicant will be required to pass a medical examination.

Applications, to be made on forms obtainable from the Shire Hall, Warwick, must reach the undersigned not later than Saturday, August 23, 1952.

L. EDGAR STEPHENS,
Secretary of the Combined
Probation Area Committee.

Shire Hall,
Warwick.
July 16, 1952.

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